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ABSTRACT

This manual constitutes a reference source on federal regulations for all those concerned with international educational exchange. This year's edition adds to the usual range of topics with more detailed information on immigrant status and related areas. Thirteen sections treat the following topics: (1) introduction to immigration law; (2) the legal status of nonimmigrants in the United States; (3) responsibilities of institutions enrolling F-1 or M-1 students; (4) F status students; (5) M status students; (6) O status (persons of extraordinary ability); (7) P status (artists, athletes, and entertainers); (8) Q Status (international cultural exchange visitors); (9) J status (exchange visitors); (10) H status (temporary workers and trainees); (11) other nonimmigrant classes; (12) immigrant status; and (13) special topics (definitions, appeals and reconsideration, deportation, technical matters, refugees and asylum applicants, extended voluntary departure, stateside processing, legalization, employer sanctions). Thirteen appendixes contain the following information: fee schedule; immigration forms; sample forms; samples of visa stamp and visa label; lists of regional and district immigration and Naturalization Service offices, Department of Labor regional offices, visa-issuing posts, countries with passport agreements with the United States and members of the NAFSA Government Regulations Advisory Committee; a fact sheet on tax rules applicable to foreign nationals, and information for students and scholars from the People's Republic of China. (Includes an index and 41 annotated references.) (JB)

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Adviser's Manual of Federal Regulations Affecting Foreign Students and Scholars

1993 Edition

Edited by Alex Bedrosian

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NAFSA: Association of International Educators

Washington, D.C.

NAFSA: Association of International Educators is a nonprofit membership association that provides training, information, and other educational services to professionals in the field of international educational exchange. Its 6,500 members—from every state in the United States and more than 50 other countries—make it the largest professional membership association in the world concerned with advancement of effective international educational exchange. Members represent primarily colleges and universities but also elementary and secondary schools, public and private educational associations, exchange organizations, national and international corporations and foundations, and community organizations. Through its publications, workshops, consultations with institutions, and conferences, the association serves as a source of professions training, a reference for standards of performance, and an advocate for the most effective operation on international educational exchange.

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Update and Assembly Instructions

This is Release 1 of the 1993 edition of the *Adviser's Manual of Federal Regulations Affecting Foreign Students and Scholars*. All pages of this release carry the date notation 11/92, except for some of the appendixes and sample forms which have been reprinted from the 1992 edition.

To assemble your *Manual*, unwrap this package and place it on the binder rings, separating each section with the appropriate tabbed divider. A tab is provided for each section and for the collected appendixes. In addition, we have provided individual tabs for several of the more frequently used appendixes. Lastly, a tab has been provided for the index.

Please inform the NAFSA publications department of ways in which we might improve the *Manual*. Thank you.

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Editor's Introduction

In 1966 the National Association for Foreign Student Affairs (now NAFSA: Association of International Educators) published its first manual on U.S. immigration law as it pertains to foreign students and scholars. The authors of that first manual, which followed a number of related publications by various NAFSA members, were Robert B. Klinger (University of Michigan), Furman A. Bridgers (University of Maryland), and Robert B. Lindsey (Immigration and Naturalization Service). Bridgers revised the *Manual* in 1969 and again in 1972. It was rewritten in 1975 by members of NAFSA's Advisory Committee on Government Regulations, which I chaired, and revised in 1979, 1981, 1983, 1989, and 1992. The present volume is the 1993 edition of NAFSA's *Adviser's Manual of Federal Regulations Affecting Foreign Students and Scholars*.

In all its editions, the *Manual* has been an indispensable reference for those concerned with international educational exchange, particularly in the current era of constantly changing regulations. Through these publications, advisers to foreign students and scholars have become familiar with many aspects of immigration law and procedures and have been aided in performing their duties more effectively.

Contents and Style. Considerable attention has been given to the organization of the material in this volume. Specific major topics are presented as entities in themselves. For example, the section on student (F) status contains most of the essential information on that topic. Therefore, advisers dealing primarily with F-1 students will need generally to refer to that section alone. Advisers are encouraged to acquaint themselves with the entire contents of the *Manual*, however, so that they will be aware of all possible contingencies.

Although earlier editions of the *Manual* concentrated on nonimmigrant classifications and status, in recent years the status of immigrants has become more important. Therefore, this edition of the *Manual* includes additional information about immigrant status and other topics. The sections on immigrant status (Section 12) and on temporary worker or trainee status (Section 10), for example, have been completely rewritten to reflect the changes brought about by the Immigration Act of 1990 (the Act), signed into law on 29 November 1990 (PL 101-649; 104 Stat. 4978).

Where the precise wording of a law or regulation is required, the Act or the *Code of Federal Regulations* (CFR) is quoted verbatim. In all cases where information comes from the Act or the CFR, the appropriate section is cited, for example, 8 CFR 214.2(f).

The annotated bibliography (Appendix 8) lists and describes references that the authors have drawn upon and that advisers may wish to have available for their own use. Also included in the appendixes for the first time is information on tax rules applicable to foreign nationals (Appendix 12) and a digest of materials pertaining to Chinese students and scholars affected by the events in Tiananmen Square in 1989 (Appendix 13).

As stated above, the authors have sought to incorporate essential information about a specific immigration classification into the section of the *Manual* corresponding to that classification. This has caused some redundancies of material and references. The authors felt this was preferable, however, to burdening the reader with many cross-references.

For the first time, the authors have prepared a comprehensive index. Advisers will find this index most useful when used in conjunction with the table of contents prefacing each chapter.

Limitations. The *Manual* makes frequent reference to the Act, formally known as the Immigration and Nationality Act with Amendments and Notes on Related Laws, PL 101-649, 104 Stat. 4978. It also cites current editions of Title 8, "Aliens and Nationality," Title 22, "Foreign Relations," and Title 20, "Employees' Benefits," of the CFR. It does not presume to substitute for those works. It is primarily a layman's digest of immigration law and regulations as they pertain to foreign students and scholars and a guide to the interpretation and use of that material. Individuals desiring a more comprehensive treatment of immigration law and regulations should refer to the above documents.

In interpreting the material in the *Manual*, foreign student advisers should be aware of their own limitations when working with complicated legal matters. An adviser should recognize when it is necessary to call for the services of a trained immigration attorney. Failure to do so may have long-range deleterious effects on the lives of the students and scholars whom the advisers are, in fact, trying to help. On the other hand, counseling provided by advisers on the basis of information provided in the *Manual* may often save the student or scholar money and obviate needless correspondence, hearings, and appeals.

Laws and regulations are subject to interpretation by those responsible for their administration. Immigration law grants discretionary authority to INS, and thus to INS district offices, but this will be reduced as INS service centers process most nonimmigrant applications. Because local practice varies, it is impossible to provide detailed, specific information and guidelines to meet every contingency. The authors have therefore attempted to provide objective, basic background material that will assist foreign student advisers in responding effectively to local variations.

Updating the Manual. Immigration regulations, forms, and procedures change frequently. It is NAFSA's intent to report such changes through the NAFSA *Newsletter* and the *Government Affairs Bulletin*, and in annual updates of the *Manual*. Advisers desiring a daily record of proposed changes in the regulations should subscribe to the *Federal Register*. Relevant material published in the *Federal Register* usually appears shortly thereafter in a condensed version in *Interpreter Releases*. Appendix 8 contains subscription information on these and other publications.

Alex Bedrosian
Editor and Project Director

Acknowledgments

NAFSA: Association of International Educators is grateful to the many persons who contributed their time, effort, and expertise to this revision of the *Adviser's Manual of Federal Regulations Affecting Foreign Students and Scholars*. The *Manual* was first published in 1975; this revision was necessitated principally by the passage of the Immigration Act of 1990.

The following individuals played significant roles in writing, editing, and reviewing the publication:

Section Authors

Sam Bernsen (Fragomen, Del Rey & Bernsen, P.C.)
Lorig S. Boyajian (Ronald W. Freeman, P.C.)
Catheryn Cotten (Duke University Medical Center)
Ronald W. Freeman (Ronald W. Freeman, P.C.)
Marjory Gooding (University of Colorado)
Pravinchandra J. Patel (Ronald W. Freeman, P.C.)
Richard B. Tudisco (Columbia University)
Jerry Wilcox (Cornell University)

Advisory Review Panel

Marvin Baron (University of California-Berkeley)
Sam Bernsen (Fragomen, Del Rey & Bernsen, P.C.)
Ronald W. Freeman (Ronald W. Freeman, P.C.)
Ann Kuhlman (University of Pennsylvania)
Gail Child Szenes (Rutgers-The State University of New Jersey)
Jennifer Stephens (International Education Services)

Government Regulations Advisory Committee

Catheryn Cotten, Chair (Duke University Medical Center)
Adam Green (Sullivan & Worcester)
Sharon Ladd (Harvard University)
Greg Leonard (University of Alabama-Tuscaloosa)
Mary Cay Martin (University of Chicago)
Richard Tudisco (Columbia University)
Jerry Wilcox (Cornell University)

The central office of the Immigration and Naturalization Service (INS), the Department of Labor, the Visa Office of the Department of State, and the Exchange Visitor Facilitative Services Staff of the U.S. Information Agency (USIA) were given the opportunity to review the final draft; some provided useful suggestions which appear in the *Manual*. However, their suggestions should in no way be interpreted as constituting an official endorsement of the *Manual*. The revision team did not always agree with their views; therefore, the publication is written from the perspective of NAFSA and not of the federal agencies.

The ninth edition of the *Manual*, although new in important respects, still reflects the contributions of the editors and authors of the eighth edition (1989), notably Gary Althen (University of Iowa), and Eugene Smith (now retired from the University of Colorado).

This *Manual* could not have been written without the continuous contributions of the central office of NAFSA: Association of International Educators. Without Amy Yenkin, assistant director of government relations, the task could not have been completed. She kept the team updated on the nuances of the latest regulations and provided extraordinarily useful interpretations and insights as needed. Paula Singer of Vacovec, Mayotte & Singer contributed useful material on tax matters, a subject treated for the first time in this *Manual*. The revision team thanks Nancy Young of New York University for her part in making this possible.

In 1975, as chair of NAFSA's Government Regulations Advisory Committee, I directed the project team that produced a major revision of the *Manual*. Now, coming out of retirement, I have thoroughly enjoyed working with so many dedicated professionals in directing this current revision which, thanks to the outstanding authors and reviewers, should be a source of information and helpful advice to all those working with international students and scholars in the years to come.

Alex Bedrosian
Editor and Project Director

November 1992

Contributors

Alex Bedrosian retired in 1989 after 35 years in the administration of the New Jersey Institute of Technology. He is a life member of NAFSA and of the Fulbright Association. In the course of a 9-year stint as chair of NAFSA's Government Regulations Advisory Committee and its predecessor, the Government Liaison Committee, Mr. Bedrosian pioneered NAFSA's advocacy effort. He chaired the 1975 revision of the *Adviser's Manual*.

Sam Bernsen served as general counsel of the Immigration and Naturalization Service and as assistant commissioner for adjudications in a career that spanned 38 years. Author of over a dozen articles on immigration law, he has lectured before consular officers at State Department's Foreign Service Institute and before immigration officers at INS training schools. He served as director of legal research for the Select Commission on Immigration and Refugee Policy, and has testified before congressional committees and addressed many bar groups on immigration law. Holder of the rank of Distinguished Lecturer at Catholic University Law School, he presently practices immigration law as head of the Washington, D.C. office of Fragomen, Del Rey & Bernsen while teaching immigration law as adjunct professor at American University Law School.

Lorig S. Boyajian is a member of the New York and New Jersey bars. Ms. Boyajian has devoted herself to the practice of immigration and nationality law exclusively since 1983. She obtained a BA in History from the University of Texas at Austin and a J.D. from the Syracuse University College of Law. She pursued graduate studies in the Soviet Union and was involved in corporate law before joining Ronald W. Freeman, P.C. Ms. Boyajian is a member of the American Bar Association and the American Immigration Lawyers Association.

Catheryn Cotten is international adviser at the Duke University Medical Center. While a work/study student, she eagerly read the 1975 edition of the NAFSA *Manual*. After receiving her degree in cultural anthropology, with excursions into international law and cross-cultural legal systems, she took a job as international adviser in an office that had just assumed responsibility for H, J, and permanent-resident visas and foreign medical graduates. Compelled to move from the global perspective of international relations to the minutiae of immigration regulations, she gave up her subscription to *Foreign Affairs* in favor of *Interpreter Releases* and turned again to the NAFSA *Manual* for help. She is pleased to contribute to a publication that has been no more than an arm's reach from her desk for most of her career.

Working in a medical center, she has internalized a philosophy that applies equally well to government regulation and disease: "The goal is to do the work so well that we put ourselves out of business. Unfortunately, Mother Nature and human nature are likely to make that goal unattainable in our lifetime."

Catheryn has been involved with NAFSA at many levels, including state representative, regional representative, regional chair, member, and chair of the Government Regulations Advisory Committee.

Ronald W. Freeman is a noted expert in the field of immigration law, having lectured widely and conducted workshops with special attention to the corporate and academic communities. He holds membership in the American Bar Association, the American Immigration Lawyers Association, the Federal Immigration Bar, and numerous county bar associations in New York State. He is a partner in Ronald W. Freeman, P.C., in New York City.

Marjory Gooding is a fourth generation Coloradoan who was born in Denver and has lived in Boulder for the last 17 years. She has taught art history and architectural history at the University of Colorado-Boulder and at Colorado College. With two teenage daughters and a high tolerance for ambiguity, she spends her time watching kids' sports (plenty), traveling (never enough), skiing (never fast enough), and fretting over INS regulations. For the past 4 years she has been with Foreign Student and Scholar Services at the University of Colorado-Boulder.

Pravinchandra J. Patel is the author of *Patel's Immigration Law Digest* (Lawyers' Cooperative Publishing Company), a digest of precedents and judicial and administrative decisions, and *Patel's Citations of Administrative Decisions under Immigration and Nationality Laws* (Legal Research Bureau). He is a member of the American Bar Association and the American Immigration Lawyers Association.

Richard B. Tudisco admits to having a shared bias of many old hands in the field who learned their regulations on the job—namely, a studious avoidance of the

NAFSA *Manual*. As he puts it, "I had lots of reasons, such as 'If it's in the *Manual*, I already know it,' and 'the *Manual* isn't very helpful in providing guidance for real-life situations.'" Over the last few years, his thinking has changed: "The world of regulations has grown infinitely more complex and keeping the full array of regs in one's head—apart from being difficult—is probably not the best use of the space between one's ears. If one needs to know, it now makes more sense just to look it up. I hope my work, which builds on the extraordinary efforts of preceding authors, will expand the usefulness of the *Manual* by providing more practical guidance to those who will need to know everything about F visas—but perhaps not all at once."

Rick has worked with INS regulations governing F-1 students for many years and, for the past four years, has served as a member of the NAFSA/INS F-1-Student Working Group. He is also a member of NAFSA's Government Regulations Advisory Committee and a NAFSA representative to the National Council on the Evaluation of Foreign Educational Credentials and the International Education Data Collection Committee. He is director of the international student office at Columbia University.

Paula N. Singer is a partner in the firm of Vacovec, Mayotte & Singer in Newton, Massachusetts. She practices primarily in the field of international tax law. Ms. Singer is a member of the American Immigration Lawyers Association and the New England International Personnel Forum.

Jerry Wilcox has worked in Cornell University's international students and scholars office for more than 20 years. During that time he has served many groups within NAFSA, including the Government Regulations Advisory Committee (which he chaired), the Field Service Steering Committee, the Council of Advisers to Foreign Students and Scholars, the Board of Directors, and regional groups. He is especially interested in the promotion of international living centers on campus and counts his Peace Corps service with Thailand's health department as one of the seminal experiences of his life.

Amy Yenkin is staff director of government relations at NAFSA: Association of International Educators. She joined NAFSA in 1990, after graduating from the University of Michigan and working for two years with the Foreign Student Service Council in Washington, D.C. She is also a regular volunteer at an AIDS service organization in Washington.

SECTION 1

Introduction to Immigration Law

Pravinchandra J. Patel and Ronald W. Freeman

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1.1 GENERAL

All countries have immigration laws designed to control the number and kinds of people permitted to enter the country. Their level of restrictiveness, however, depends on the country's population policy. Throughout its early history, the United States welcomed immigrants without restrictions. In fact, for the first 100 years of its history, immigration was virtually unrestricted. Indeed, the first general immigration law and the discriminatory Chinese Exclusion Act were adopted in 1882, followed by other important legislation. This trend then led to the national-origin quota legislation enacted in 1924. The Immigration Act of 1924, providing for qualitative immigration with numerical limitations, favored immigration from northern and western Europe, discouraged immigration from southern and eastern Europe, and excluded immigration from Asia almost entirely.

1.2 THE CURRENT STATUTE

The current Immigration and Nationality Act, also known as the McCarran-Walter Act of 1952, is the basic immigration statute. Enacted in 1952, it continued a form of the national-origin quota system. With a major amendment in 1965, however, most of its discriminatory provisions were abolished and a selection system was introduced for immigration based on family relationships and this country's need for immigrants with particular skills. Since the enactment of the 1952 Act, Congress has periodically passed important amendments to that basic legislation, the most recent being the Immigration Act of 1990 (the Act).

1.3 REGULATIONS

While the Act provides the basic structure of the immigration system, the daily operations of the various governmental agencies that administer the immigration laws are prescribed by regulations. These regulations are promulgated by the appropriate agency or department, published in the *Federal Register*, and incorporated into the *Code of Federal Regulations* (CFR). Such regulations must be consistent, however, with statute, as well as the U.S. Constitution. Regulations found by the courts to be contrary to or in violation of the underlying statute or any constitutional right may be nullified. As long as regulations are in effect, however, they have the force of law and are enforced by the courts

Proposed amendments to the CFR are published in the *Federal Register*, and are normally followed by what is known as a "Notice and Comment" period, i.e., a time during which the public may submit comments, views, or recommendations regarding such proposals. Final regulations are then published in the *Federal Register* and take effect from the date indicated in the regulations. The *Federal Register* is published daily. Each title of the CFR, however, is compiled and updated annually, incorporating all changes in the existing regulations or all new regulations.

The regulations of the U.S. Immigration and Naturalization Service (INS) are contained in Title 8 of the *Code* *of Federal Regulations* (8 CFR "Aliens and Nationality"); those of the Department of State and the U.S. Information Agency (USIA) are contained in Title 22 (22 CFR "Foreign Relations"); and those of the Department of Labor (DOL) in Title 20 (20 CFR "Employees' Benefits").

1.4 OPERATIONS INSTRUCTIONS

Beside the INS regulations, INS officials must follow internal guidelines known as "Operations Instructions" (OIs). OIs track the regulatory framework, elaborate on the regulations, and provide detailed instructions and procedures to INS officials in carrying out their duties. Similar internal guidelines of the Department of State are contained in the *Foreign Affairs Manual* (FAM) and other periodic communications, for guidance to consular officers. The Department of Labor, too, has its own set of operating instructions contained in the *Technical Assistance Guide* (TAG). As a general rule, such operating instructions are not published in the *Federal Register*, nor do they have the force of law. They furnish only general guidance for department employees and do not confer any substantive rights.

1.5 ADMINISTERING AGENCIES

The Act and all immigration-related provisions contained in other statutes are administered and enforced within the United States by INS, an agency of the Department of Justice; outside the United States they are enforced by the consular posts of the Department of State. Within the United States, the Department of Labor is also involved in administering the employment-based provisions or the labor-certification provisions of the Act affecting certain immigrants and nonimmigrants. USIA, an agency of the Department of State, is also involved in administering certain provisions of the Act through its control and supervision of exchange-visitor programs.

1.6 IMMIGRANTS AND NONIMMIGRANTS

INS makes a basic and definite distinction between two categories of aliens: immigrants and nonimmigrants. The former come to the United States with the intention of residing here permanently; the latter come here for a temporary period and return to their country before the expiration of the authorized temporary period. As a general rule, the law presumes that each alien applicant for a U.S. visa or for admission to the United States is an intending immigrant unless the applicant can establish status as a bona fide nonimmigrant under one of the nonimmigrant categories, such as a visitor, student, or exchange visitor. (Advisers to foreign students and scholars are normally concerned with these specific nonimmigrant categories). The burden of proof thus rests with the alien applicant to demonstrate eligibility for a nonimmigrant visa or entry. Further, most nonimmigrants must demonstrate that they have a residence in a foreign country that they have no intention of abandoning and that they are coming to the United States temporarily for some specific purpose. However, there are exceptions to this particular rule. For example, temporary H-1 and L-1 aliens are specifically exempted by the statute from this rule.

1.7 RECENT LEGISLATIVE DEVELOPMENTS

Three recent legislative developments are worth noting. First, in an effort to stem the tide of illegal or unauthorized aliens entering the United States, Congress passed the Immigration Reform and Control Act of 1986 (IRCA), PL 99-603, signed into law on 6 November 1986. The salient provisions of this law seek to: (1) sanction employers and their agents who knowingly hire aliens not authorized to work; (2) improve INS enforcement and service; (3) legalize the status of aliens who had been in the United States in illegal status continuously since 1 January 1982 by adjusting their status first to that of temporary residents and then to that of permanent residents; (4) create a new category for temporary agricultural workers (H-2A) and provide for permanent residence of certain agricultural workers; (5) prohibit status adjustments for nonimmigrants who have not maintained their nonimmigrant status; (6) increase the number of immigrant visas available to natives of dependent areas; (7) confer special immigrant status on some G-4 nonimmigrants; and (8) establish a visa waiver pilot program for citizens of certain countries.

Another significant piece of legislation, also passed in 1986 just a few days after the passage of IRCA, was the Immigration Marriage Fraud Amendments of 1986 (IMFA), PL 99-639, signed into law on 10 November 1986. This law was primarily aimed at eliminating or reducing the practice of gaining permanent residence through fraudulent marriages to U.S. citizens or residents. It also provided for exclusion of the aliens who use fraudulent statements or documents to obtain any visa benefit, and thus affects students and scholars applying for visas abroad or immigration benefits in the United States.

Third and finally, after four years of intense efforts by INS to implement the various provisions of IRCA and IMFA, Congress recently passed major legislation that touches almost every aspect of immigration law. Known as the Immigration Act of 1990 (the Act), signed into law 29 November 1990 (PL 101-649), this legislation is universally recognized as the most sweeping and far-reaching reform of this country's legal immigration system in the last 38 years. It constitutes a complete revision of both family-sponsored and employment-based immigration, increasing the upper limit of immigrants who may enter the United States every year. Related provisions modify certain existing nonimmigrant categories and create four new nonimmigrant classes, as well as a new "diversity immigrant" category. Temporary protected status is provided for aliens from El Salvador and certain other countries in political turmoil. Other provisions deal with administrative naturalization, criminal aliens, employer sanctions, exclusion and deportation, marriage fraud, and favorable treatment for residents of Hong Kong.

Although the provisions of the Act of 1990 have different effective dates, its major provisions went into effect on 1 October 1991. Also, while some of the changes made by this law are commendable, others are quite troublesome, such as the changes made in H1-B provisions for temporary employment of university faculty. Positive features of the Act include an increased overall cap on immigration; early unification of members of immediate families (spouse and minor children of residents); and, more particularly, a nearly three-fold increase in the allocation of visas to employment-based immigrants.

National economies of the world are increasingly assuming global proportions, and the United States has a growing need for highly skilled aliens so that American companies can compete successfully in the world market. This acutely felt need was the prime motivating force for the enactment of the employment-based immigration provisions in the new legislation.

A number of provisions in the Act, effective 1 October 1991, modify certain existing employment-related nonimmigrant categories, such as E, H, and L, and create certain new nonimmigrant categories, such as O, P, Q, and R (see Sections 6, 7, 8, and 11). Also, a provision of immediate significance and interest to foreign student advisers relates to off-campus work authorization for nonimmigrant F students. Section 221 of the Act provides that, during the 3-year period beginning 1 October 1991, the attorney general shall grant an F alien work authorization for employment in a position unrelated to the alien's field of study and off-campus if: (l) the alien has completed 1 academic year as a nonimmigrant student in F-1 status and is maintaining good academic standing; (2) the employer attests to the educational institution and the secretary of labor that he has recruited at least 60 days for the position and will pay the alien and other similarly situated workers the greater of the actual wage level for the occupation at the place of employment or the prevailing wage level for the occupation in the area of employment; and (3) the alien will not be employed more than 20 hours each week during the academic term (except during the vacation periods and between academic terms—see Section 4.9.2).

The Act also provides that if the secretary of labor determines that an employer has provided a materially false attestation or has failed to pay wages in accordance with the attestation, then the employer, after notice and opportunity for a hearing, shall be disqualified from employing an alien student under this provision. Further, the INS commissioner is mandated to prepare and submit to Congress, not later than 1 April 1994, a report on whether this program of off-campus work authorization should be extended, and on the impact of the program on prevailing wages of workers.

Regarding the changes made in the nonimmigrant temporary worker and trainee (H) category, there are five different subcategories of H visa (H-1A for nurses, H-1B for aliens in "specialty" occupations, H-2A for temporary agricultural workers, H-2B for other temporary workers except foreign medical graduates, and H-3 for trainees). Also, certain artists, athletes, entertainers, and prominent people, formerly eligible for H-1 visa, are now separately covered by two new nonimmigrant visa categories: "O" (aliens of extraordinary ability in the sciences, arts, education, business, or athletics) and "P" (internationally recognized athletes and entertainers).

For the first time, the new law imposes an annual cap of 65,000 on the number of nonimmigrant visas that can be issued to H-1B principal aliens; a cap of 66,000 exists for H-2B principal aliens. Within these upper limits, visas will be issued in the order in which petitions are filed for such visas or status. However, this numerical limitation does not apply to spouses and children of principal H-1B and H-2B aliens.

The H-1B nonimmigrant category is substantially redefined. It is now available only to an alien coming temporarily to perform services in a "specialty occupation" as defined by the statute. Such aliens must meet certain requirements for the occupation, and their employer must comply with the new labor-condition application process. The term "specialty occupation" requires: (l) theoretical and practical application of a body of highly specialized knowledge, and (2) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States. The law also requires that the alien have full state licensure if licensure is required to practice that occupation. With regard to the degree requirement, the alien must demonstrate completion of the degree, or experience equivalent to the completion of such degree in combination with recognition of expertise through progressively more responsible positions relating to the specialty (see Section 10)

The law also requires a labor-condition application, for purposes of H-1B status, under which the employer must file an application with the secretary of labor, stating and documenting that (l) the employer offers and will continue to offer to aliens the greater of the actual wage level paid by the employer to other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for the occupational classification; (2) there is no strike or lockout at the place of employment; and (3) a notice of such filing is provided to a bargaining representative, or, if no such representative exists, it is posted in conspicuous locations at the place of employment. Such applications are also required to specify the number of workers sought, the occupational classification in which the workers will be employed, and wage rate and conditions of employment. The employer is also required to make available for public examination, within one working day, a copy of each such application and accompanying documents. DOL is directed to establish a process for investigation and disposition of complaints, filed within 12 months, regarding failures or misrepresentations of an employer, and is invested with authority to impose civil monetary penalties including a fine not exceeding $1,000 per violation. If the violation pertains to nonpayment of certified wages, DOL may issue an order for payment of back pay as required.

The admission period of H-1B aliens is now increased from 5 to 6 years. The law gives, for the first time, a statutory recognition that the filing of a preference petition or adjustment-of-status application for or by an H-1 or L alien shall not constitute evidence of an intention to abandon a foreign residence for purposes of obtaining or maintaining nonimmigrant H-1 status. Further, while section 214(b) of the Act generally raises a presumption for every alien to be an immigrant unless he can establish that he is indeed a nonimmigrant and is entitled to a nonimmigrant status, the new law excludes nonimmigrant H-1 aliens from such presumption and thereby relieves them of the burden of establishing that they are not immigrants.

Lastly, with respect to H-1B and H-2B nonimmigrants, if such a nonimmigrant is dismissed from employment by the employer before the end of the period of authorized admission, the employer shall be liable for the reasonable costs of return transportation abroad.

With regard to H-3 trainees, the statute now explicitly requires that the training program is not one "designed primarily to provide productive employment." This does not represent a new requirement, however, for the current administrative case law consistently requires the petitioner to demonstrate that the training program is not one designed primarily to provide productive employment.

Beside the two new nonimmigrant categories ("O" for aliens with extraordinary ability in the sciences, arts, education, business, or athletics, and "P" for certain athletes and entertainers), the new statute provides for another new nonimmigrant category (Q) for participants in international cultural-exchange programs. Under this provision, an alien who is coming as a participant in an international cultural-exchange program designated by the attorney general for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the alien's country qualifies for Q nonimmigrant classification, provided that the alien will be employed under the same wages and working conditions as domestic workers. The period of authorized status as a Q nonimmigrant cannot exceed 15 months.

One more new nonimmigrant category (R) created by the new law is for certain aliens in religious occupations.

Additionally, the Act provides for two other minor nonimmigrant provisions. One provides for admission of nonimmigrants for cooperative research related to the Department of Defense, development, and coproduction projects, with a numerical limitation of a total of 100 such admissions at any time. The other provides for establishment of an exchange program for those studying special education and for the admission of nonimmigrant participants in such a program, with a numerical limitation of a total of 50 such admissions in any fiscal year.

In light of these profound legislative changes, all three involved agencies or departments (INS, DOS, and DOL) have drafted and revised their relevant regulations, which became operational on 1 October 1991.

INS is consistently making efforts to alleviate certain problems affecting academic and other institutions by working closely with NAFSA: Association of International Educators and other active national organizations such as AILA (American Immigration Lawyers Association) in periodic reevaluations of existing regulations. Advisers to foreign students and scholars are responsible for staying abreast of statutory and regulatory changes that may affect those whom they advise in the performance of their official duties. Advisers are also responsible for carrying our their duties in a thorough and professional manner, not only to prevent their advisees from being inadvertently misled but also to provide them with the information they need to remain in compliance with laws and regulations.

It should also be noted that it is not the responsibility of advisers to enforce the laws and regulations or to make reports to government agencies beyond what is required for any particular class or classes of nonimmigrants. For example, it is not the adviser's responsibility to report to the INS any students who may have been engaged in unauthorized activity, except when specifically required to do so by regulations. To do so would destroy the working relationship with the aliens, jeopardize the adviser's role as the representative and employee of the college or university, and improperly and incorrectly suggest that the adviser is an agent of the government.

With such profound statutory and regulatory changes, the challenge to serve foreign students and scholars and to keep them properly informed of U.S. laws and regulations has significantly increased. It is imperative that all professionals in the field of international educational exchange possess thorough information about all aspects of relevant laws and regulations and periodically reexamine the ways in which they communicate information to the students and scholars who depend on them for information and guidance. Only in this way will they be able to maintain an approach that will encourage foreign students and scholars to use their services and rely on their advice.

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SECTION 2

The Legal Status of Nonimmigrants in the United States

Marjory Gooding

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I-94	Arrival/Departure Record
I-151	Alien Registration Receipt Card (issued before 1979)
I-186	Border Crossing Card
I-551	Alien Registration Receipt Card
I-586	Border Crossing Card
I-688	Temporary Resident Card
I-688A	Employment Authorization Card
CI	Certificate of Identity
AR-11	Address Report Card
OF-156	Application for Nonimmigrant Visa

2.1 NONIMMIGRANT CLASSES

A nonimmigrant is any alien coming to the United States for a temporary stay that will end when its purpose has been accomplished.

Nonimmigrant visas are issued in accordance with provisions of Section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101), as amended (the Act). Most students receive F-1 visas and enter the United States in F-1 status if they will pursue a full course of study in an academic institution or engage in language training. They are given M-1 status if they are entering to pursue a full course of study at an established vocational or other recognized nonacademic institution. Some are in J-1 (exchange visitor) status. A few may also hold other classifications (sometimes as dependents), such as diplomat (A), temporary worker (H), treaty trader/investor (E), or international organization employee (G). Foreign scholars (professors, researchers) are usually in J-1 or H-1B status; occasionally they may have O-1 status.

The *Manual* contains sections on each of the nonimmigrant classifications most frequently encountered in the field of international educational exchange, namely, F students (Section 4), M students (Section 5), J exchange visitors (Section 9), and H temporary workers or trainees (Section 10). Section 11 gives brief information about other nonimmigrant classes.

The Act, as amended, designates the nonimmigrant classes listed below. The different classes of nonimmigrants are known by the subletter of the immigration law concerning their class. For example, Section 101(a)(15)(F)(i) of the Act, as amended, is the full reference for what is commonly called the F-1 student.

2.2 PASSPORTS

2.2.1 Definition

A passport is defined in the Act as "any travel document issued by competent authority showing the bearer's origin, identity, and nationality, if any, which is valid for entry of the bearer into a foreign country." [Act 101(a)(30)] In this context, a passport may encompass documents other than those traditionally thought of as a passport, and may in fact be a set of documents such as a Certificate of Identity and a reentry permit for the country issuing the documents. A passport permits its bearer to return to the issuing country, usually the country of the bearer's nationality. Occasionally a person may consider himself or herself "stateless" and carry documents or a passport issued by the country in which he or she resides.

2.2.2 Travel documents in lieu of passport

Some aliens will have travel documents other than passports. The most common document is a Certificate of Identity (CI), sometimes held by Hong Kong students who are not British subjects. The bearer of a CI is usually a person who is not a citizen of the foreign state issuing the CI, but is a resident of that state who, for some reason, cannot or will not obtain a travel document from the state of citizenship. As another example, individuals who are refugees may hold refugee travel documents issued by countries signatory to the United Nations Convention Relating to the Status of Refugees. In this volume, the term "passport" encompasses travel documents used in lieu of passports.

2.2.3 Validity of passports

A passport shows the date of its issuance and the date to which it is valid (its expiration date). The period of validity of a passport varies according to the regulations and procedures of the issuing country, and may range from 1 year to several years.

2.2.4 Passport requirements

With certain exceptions, any alien applying for a U.S. visa or seeking admission at a U.S. port of entry must have a passport. The most common exceptions encountered by educational institutions are Canadian nationals and Canadian landed immigrants who are entering the United States from within the Western Hemisphere [8 CFR 212.1(a)], and citizens of the Federated States of Micronesia and the Republic of the Marshall Islands who have proceeded in direct and continuous transit to the United States. [8 CFR 212.1(d)] British subjects who reside in Bermuda or Canada are not required to have passports, except after a visit outside the Western Hemisphere. A visa and a passport are required of Bahamian nationals or British subjects living in the Bahamas.

Preinspection by INS authorities in the Bahamas may eliminate the need for a visa on the part of these travelers. No visa is required of British subjects residing in, and arriving directly from, the Cayman Islands or the Turks and Caicos Islands. Such individuals must, however, present specifically defined evidence that they have no record of criminal activity. [8 CFR 212.1(a)] Note that the waiver of the passport and visa requirement does not apply to Mexican nationals, except for those who are in possession of a Border Crossing Card and are applying for admission as temporary visitors for business or pleasure. A Border Crossing Card was formerly issued in the form of a laminated card (Form I-186 or I-586) and it is still valid in that form if not voided. Currently, Border Crossing Cards are issued in the form of a stamp in a Mexican passport or on a Mexican identity document. [*Foreign Affairs Manual*, Vol. 9, Sec. 41.32]

The passports of all nonimmigrants must be kept valid at all times. The requirement that passports be kept valid for a minimum period of 6 months into the future was dropped in late 1987. [*Federal Register*, 30 November 1987, pp. 45445-46] The 1987 regulation states that, with certain exceptions, "the passport of an alien applying for admission shall be valid for a mini-

Nonimmigrants

Visa Symbol	Class	Section of Law
A-1	Ambassador, public minister, career diplomat or consular officer, and members of immediate family	101(a)(15)(A)(i)
A-2	Other foreign government official or employee, and members of immediate family	101(a)(15)(A)(ii)
A-3	Attendant, servant, or personal employee of alien classified A-1 or A-2, and members of immediate family	101(a)(15)(A)(iii)
B-1	Temporary visitor for business	101(a)(15)(B)
B-2	Temporary visitor for pleasure	101(a)(15)(B)
C-1	Alien in transit	101(a)(15)(C)
C-2	Alien in transit to United Nations headquarters district under Section 11 (3), (4), or (5) of headquarters agreement	101(a)(15)(C)
C-3	Foreign government official, members of immediate family, attendant, servant, or personal employee, in transit	212(d)(8)
D	Crewman (seaman or airman)	101(a)(15)(D)
E-1	Treaty trader, spouse, and children	101(a)(15)(E)(i)
E-2	Treaty investor, spouse, and children	101(a)(15)(E)(ii)
F-1	Student in academic or language program	101(a)(15)(F)(i)
F-2	Spouse or child of student in academic or language program	101(a)(15)(F)(ii)
G-1	Principal resident representative of recognized foreign member government to international organization, staff, and members of immediate family	101(a)(15)(G)(i)
G-2	Other representative of recognized foreign member government to international organization, and members of immediate family	101(a)(15)(G)(ii)
G-3	Representative of nonrecognized or nonmember foreign government to international organization, and members of immediate family	101(a)(15)(G)(iii)
G-4	International organization officer or employee, and members of immediate family	101(a)(15)(G)(iv)
G-5	Attendant, servant, or personal employee of alien classified G-1, G-2, G-3, or G-4, and members of immediate family	101(a)(15)(G)(v)
H-1A	Temporary worker performing professional nursing services	101(a)(15)(H)(i)(a)
H-1B	Temporary worker in a specialty occupation	101(a)(15)(H)(i)(b)
H-2A	Temporary agricultural worker	101(a)(15)(H)(ii)(a)
H-2B	Temporary worker performing nonagricultural services unavailable in the United States	101(a)(15)(H)(ii)(b)
H-3	Trainee	101(a)(15)(H)(iii)
H-4	Spouse or child of alien classified H-1, H-2, or H-3	101(a)(15)(H)(iv)
I	Representative of foreign information media, spouse, and children	101(a)(15)(I)
J-1	Exchange visitor	101(a)(15)(J)

J-2	Spouse or child of exchange visitor	101(a)(15)(J)
K-1	Fiancée or fiancé of U.S. citizen	101(a)(15)(K)
K-2	Child of fiancée or fiancé of U.S. citizen	101(a)(15)(K)
L-1	Intracompany transferee	101(a)(15)(L)
L-2	Spouse or child of alien classified L-1	101(a)(15)(L)
M-1	Student in vocational or other recognized nonacademic institution	101(a)(15)(M)(i)
M-2	Spouse or child of student in vocational or other recognized nonacademic institution	101(a)(15)(M)(ii)
N-8	Parent of an alien child accorded special immigrant status	101(a)(15)(N)
N-9	Child of an alien parent accorded special immigrant status	101(a)(15)(N)
NATO 1-7	Includes the principal permanent representative of a NATO state; other representatives of member states; official clerical staff; officials of NATO; experts; members of a civilian component accompanying a force; attendants, servants, or personal employees of NATO visa holders; and members of immediate family of the above.	Various treaty articles
O-1	Workers of "extraordinary" ability in the sciences, arts, education, business, or athletics	101(a)(15)(O)
O-2	Workers who accompany and assist O-1 aliens	101(a)(15)(O)(ii)
O-3	Family members of O-1 and O-2 aliens	101(a)(15)(O)(iii)
P-1	"Internationally recognized" entertainers and athletes	101(a)(15)(P)(i)
P-2	"Reciprocal exchange" artists and entertainers	101(a)(15)(P)(ii)
P-3	"Culturally unique" artists and entertainers	101(a)(15)(P)(iii)
P-4	Family members of P-1, P-2, or P-3 aliens	101(a)(15)(P)(iv)
Q	Cultural Exchange Visitors	101(a)(15)(Q)
R	Religious Workers	101(a)(15)(R)

For further information, see Section 11, "Other Nonimmigrant Classes" mum of 6 months from the expiration date of the contemplated period of stay." The exceptions include nonimmigrants, such as F-1 students, who are admitted for duration of status (see Section 4.4.1.3). Some countries have entered into agreements with the U.S. government acknowledging that, for purposes of making applications, a passport is valid for 6 months beyond the expiration date shown in the passport itself. Bearers of passports from these countries may be admitted to the United States up to the expiration date shown in the passport, as long as no other INS regulations prohibit such a stay. They may also make application for benefits accruing to their nonimmigrant status up until the expiration date shown on the passport. Naturally, once their passport expires, they may not use it for travel. Advisers should caution students and scholars to watch the expiration dates on their passports carefully. A list of countries that have passport validity agreements with the United States appears in Appendix 9.

2.2.5 Revalidation or reissuance of a foreign passport

Foreign passports may be revalidated or reissued in the United States by the designated representatives of foreign governments, usually officials of the consular section of the government's embassy in Washington, D.C., or officials of the consulates located in various U.S. cities. A foreign student or scholar who needs to renew a passport should consult his or her embassy or consulate to determine what procedures are required. It is wise for foreign nationals to apply as far in advance as allowed by the home government in order to ensure a timely extension (see Section 2.3.5 for information about the validity of unexpired visas in expired passports).

2.3 VISAS

2.3.1 Definition

A visa to enter the United States as a nonimmigrant is a stamped or affixed entry on a page of the passport. It enables the passport bearer to request the immigration officer at the port of entry to grant admission to the United States under conditions specified for the type of visa the bearer holds.

The nonimmigrant visa stamp shown in the samples reproduced in Appendix 4 contains the following information: the visa number; the location of the issuing office; the visa classification; the date of issuance; the expiration date or the word "indefinitely" if, on the basis of reciprocity with the bearer's home government, a visa with indefinite validity is issued; the number of applications for admission to the United States for which it is valid, or the word "multiple" in cases where an indefinite number of applications for admission are allowed during the visa's period of validity; usually the name(s) of the person(s) to whom issued; and the signature or facsimile signature of the issuing officer. [22 CFR 41.113(d)]

Students and others often confuse the term "visa," which gives a person permission to apply for entry to the United States, and the terms "Arrival/Departure Record," "I-94," "authorized stay," or "permission to stay." The latter terms refer to a person's permission to remain in the United States after having entered (see Section 2.4). A person's visa need not remain valid once he or she has used it to gain admission to the United States. The permission to stay, by contrast, must be kept valid.

Confusion also surrounds the terms "visa" and "status," or "classification." The visa is stamped in the alien's passport and is used for entering the United States; the alien is said to be in a particular immigration status, or classification, once in the United States. The type of visa stamped in the passport, however, may not be the same as the status in which the alien is in the United States. An alien may enter the country with one type of visa (e.g., B-2 visitor–prospective student) and subsequently have his or her status changed, perhaps to that of an F-1 student. This change will be noted on the Form I-94 of the alien, who will then be in F-1 status even though the visa stamped in the passport is a B-2 visa. This individual will have one type of visa and a different type of status. To reenter the United States in F-1 status (with certain exceptions), this person would have to apply for an F-1 visa at a U.S. embassy or consulate abroad (see Sections 2.2.4 and 2.3.2).

Similarly, a person may have more than one valid visa stamp in the passport. For example, a student or scholar with a valid F-1 or J-1 stamp may also have a valid B-1 or B-2 tourist stamp. The person's status in the United States will be that assigned by the immigration officer at the port of entry and entered on the I-94, Arrival/Departure Record. To prevent admission in the wrong classification, it is important that the student or scholar present proper visa documents (an I-20 or IAP-66 in the case of F or J class) and properly and clearly indicate to the immigration officer the purpose of the intended stay in the United States. Otherwise, the student or scholar may be admitted in a visa class that will prevent him or her from engaging in certain activities, such as on-campus employment, until a change of status can be obtained from INS, a process that may take several weeks or months.

2.3.2 Visa requirements

With certain exceptions, all aliens applying for admission to the United States must hold valid visas. The exceptions to this requirement are generally the same as the exceptions to the passport requirements (see Section 2.2.4). Note, however, that Canadian nationals, among others, who are entering the United States from outside the Western Hemisphere must have a passport but not a visa. [8 CFR 212.1(a) and 22 CFR 41.2]

Certain aliens applying for admission to the United States as visitors (for business or pleasure) can enter without visas under the Visa Waiver Pilot Program. To be eligible, the alien must be a citizen of a country designated as a participant in the Visa Waiver Pilot Program, must intend to remain in the United States for fewer than 90 days, must have a valid passport and a nontransferable, nonrefundable (except under specific circumstances) round-trip ticket, and must meet other criteria set forth in 8 CFR 217.2(a). Aliens admitted under the Visa Pilot Waiver Program are not eligible for extension of stay, change of nonimmigrant status, or adjustment of status to that of a permanent resident. [8 CFR 217] At this writing, the list of countries designated as participants in the Visa Waiver Pilot Program included France, Italy, Japan, The Netherlands, Sweden, Switzerland, the United Kingdom, Germany, Spain, Austria, New Zealand, Finland, Belgium, Denmark, Norway, Iceland, Luxembourg, San Marino, Andorra, Monaco, and Liechtenstein. The Immigration Act of 1990 extends the Visa Waiver Pilot Program to 30 September 1994 and permits the secretary of state and the attorney general to expand the program to other countries (see Section 11.2.2.6). [Act 201; *Federal Register*, August 30, 1991]

If an alien who is maintaining nonimmigrant status returns to the United States after an absence not exceeding 30 days in contiguous territory (Canada or Mexico), his or her visa is considered to be extended automatically to the date of reentry if certain conditions are met. For aliens in F or J status, this automatic extension also extends to trips of 30 days or less to adjacent islands other than Cuba. The Act defines such "adjacent islands" as Saint Pierre, Miquelon, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French, and Netherlands territories or possessions in or bordering on the Caribbean Sea. [Act 101(b)(5)] Sections 4.4.1, 5.11, 9, 10, and 11.5 provide detailed explanations of this provision as it applies to the various nonimmigrant classifications. [8 CFR 214.2(b) and 22 CFR 41.112(d)]

2.3.3 Requirements for obtaining a visa

Application for a nonimmigrant visa usually requires a personal appearance before the consular officer assigned to the applicant's consular district, completion of Form OF-156 (Application for Nonimmigrant Visa), and the provision of other documents that the consular officer may require in order to be satisfied that the applicant is eligible for the nonimmigrant visa for which he or she is applying. These other documents include the appropriate Certificate of Eligibility (Form I-20A-B, Form I-20M-N, or Form IAP-66) for student or exchange-visitor applicants, notice of an approved petition (Form I-797 or Form I-171C) for temporary-worker or trainee applicants, and other documents for applicants for other types of visas.

Required documents might also include evidence of adequate financial resources, evidence of competence in English, evidence of educational attainments, photographs, and police certificates. [22 CFR 41.101-41, 108]

Fees are charged a foreign national applying for a nonimmigrant visa. The size of the fee, the length of the visa's validity, and the number of applications for admission are all determined "as nearly as practicable" on the basis of reciprocity. That is, the United States will try to match the treatment given U.S. citizens applying for visas to the alien's country (see Section 11). [Act 221(c); 22 CFR 41.107(a) and 41.112(b)]

2.3.4 Function of consular officers

According to federal regulations, "an applicant for a nonimmigrant visa shall be presumed to be an immigrant until the consular officer is satisfied that the applicant is entitled to a nonimmigrant status.... The burden of proof is upon the applicant to establish entitlement for nonimmigrant status and the type of nonimmigrant visa for which application is made." [22 CFR 41.11]

Thus, the consular officer has discretion to require whatever evidence is necessary to demonstrate that an applicant for a nonimmigrant visa is eligible for such a visa. Consuls operate under guidelines furnished by the Visa Office of the Department of State, but they retain discretionary authority in determining the facts of a given case.

If a consul has reason to believe that a visa applicant is not a bona fide nonimmigrant, the visa application may be denied. The most common reason for denying a visa is that the consular officer is not convinced that the applicant has a residence in a foreign country that he or she has no intention of abandoning. In such a case, the applicant may attempt to convince the consul that there is both need and reason to return to the foreign residence. This can be done in a variety of ways, such as showing evidence of a job offer or a job to which to return, proving ownership of property, or explaining family ties and responsibilities.

School officials who believe a consul is making unreasonable requirements of a specific visa applicant can contact the consul and request reconsideration of the application. A school official also can furnish details of the situation to the Department of State, Visa Office, Public Inquiries Division, and request that division to ensure that the consul is following established guidelines. While the Visa Office has no formal authority to override the decision of a consular officer who is legitimately exercising discretion, a Visa Office inquiry to a consular officer can clarify the reasons for a decision. There is no formal appeal from a consul's denial of a visa application (see Section 13.3.2.1).

2.3.5 Unexpired visa in expired passport

The *Foreign Affairs Manual* provides the answer to a quandary that a foreign national occasionally faces:

> The expiration of the passport in which a visa has been issued has no effect on the validity of the visa.

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However, the holder of a valid visa should be informed of the need for a passport at the time of admission, valid for a minimum period of 6 months from the date of expiration of the initial period of admission or contemplated initial period of stay in the United States. The passport may be either the passport in which the visa stamp is placed or a new passport. Thus, a nonimmigrant can fulfill the visa and passport requirements by presenting two documents, one of which fulfills the visa requirement and the other the passport requirement, provided the alien's nationality as indicated in the new passport is the same as shown in the passport bearing the visa stamp. [*FAM*, Vol. 9, Sec. 41.112, N3.3]

2.4 FORM I-94 (ARRIVAL/DEPARTURE RECORD)

2.4.1 General

Every alien entering the United States temporarily (with a few exceptions, such as tourists from Canada and, under certain circumstances, Mexican nationals holding Border Crossing Cards) is issued a Form I-94 (a sample Form I-94 is reproduced in Appendix 3). When the alien enters the United States, the Arrival Record portion of the form is detached and kept by INS. The Departure Record is usually stapled into the alien's passport on the same page on which the visa has been stamped.

Form I-94 shows the alien's immigration classification and endorsements made by immigration officers to indicate the place and date of the alien's admission to the United States and the initial period of stay authorized. (See Section 2.3.1 for discussion of permission to stay.) If the alien is classified as other than an F-1 or M-1 student, or an E, H, L, O, P, or Q nonimmigrant, the Form I-94 also shows any authorized extension of stay, any change of nonimmigrant classification, and some other INS actions affecting the alien. Transactions affecting E, H, L, O, P, and Q nonimmigrants are recorded on Form I-797, the notice of approval or extension of nonimmigrant visa application. If the alien is an F-1 or M-1 student, some actions taken by INS are recorded on Form I-20 ID Copy (see Sections 3, 4, and 5).

2.4.2 Replacement of a lost Form I-94

To replace a Form I-94 that has been lost or mutilated, an alien applies to INS on Form I-102 (see Appendix 1). If a photocopy of the lost Form I-94 or a copy of the passport page showing the date of last entry can be submitted with Form I-102, processing time may be greatly reduced. INS should not charge for the replacement if it lost the form. An adviser may advise foreign nationals to retain a photocopy of Form I-94 and Form I-20 ID Copy (the yellow card used between 1984 and 1 July 1988) or Form I-20 ID (Student) Copy (as used after 1 July 1988). Designated school officials are now required to retain a photocopy of the Form I-20 ID Copy (or, presumably, the Form I-20 ID [Student] Copy) as part of required record keeping for F-1 and M-1 students. [8 CFR 214.3(g)(1)(xii), *Federal Register*, 22 April 1987, p. 13229]

2.5 ALIEN REGISTRATION AND ADDRESS REPORT

2.5.1 Registration

All aliens admitted to the United States must be registered for immigration purposes. Initial registration is effected when the alien applies for a visa. [Act 221(a) and (b), 261, 262, and 264] Form I-94, the Arrival/Departure Record, serves as the registration form for aliens admitted as nonimmigrants. [8 CFR 264.1(a)]

Until 1970 INS assigned an alien registration number to all immigrants and to nonimmigrants admitted to the United States as F-1 students and J-1 exchange visitors. The alien registration number begins with the letter "A" followed by eight digits. Alien registration numbers are no longer routinely assigned to nonimmigrants. They may be assigned in cases involving nonroutine applications, nonimmigrants under proceedings, and other unusual circumstances. In addition, INS service centers may assign "A" numbers to F or J students or scholars for record-keeping or computer-access purposes. Most foreign students and exchange visitors now in the United States do not have alien registration numbers.

Form I-551 (or Form I-151, issued before 1979), the Alien Registration Receipt Card, commonly known as the "green card," is the registration form for aliens admitted as immigrants or who become immigrants through adjustment of status. It is a rectangular, laminated card, in green, blue, salmon, or white, showing the alien's photograph and time and place of admission as an immigrant (see Section 12.9). [8 CFR 264.1(b)]

Alien spouses of U.S. citizens or lawful permanent residents who have been granted permanent residence based on marriage to a U.S. citizen or resident are issued the Conditional Resident Alien Card I-551. This is the same card issued to permanent-resident aliens described above, but is valid for a limited period of time. The expiration date is on the back of the card.

Aliens granted temporary-resident status under the legalization or agricultural workers programs are issued the Temporary Resident Card, I-688. It is valid until the expiration date shown on the face of the card. Temporary residents who have already been interviewed for legalization or for the agricultural workers program are issued the Employment Authorization Card, I-688A. It is valid for 6 months and shows the expiration date on its face.

2.5.2 Address reports

Immigrant and nonimmigrant aliens living in the United States are required to report to INS any change of address within 10 days of that change. Aliens can use Form AR-11, which should be available at post offices and INS offices, but which is frequently out of stock and not available. [8 CFR 265.1]

2.6 Extension of Temporary Stay

Upon their initial admission to the United States, most nonimmigrants receive permission to stay in the country for a specific period of time. Nonimmigrants who wish to remain in the United States beyond that period must, if eligible to do so, apply for extension of their permission to stay. The procedure for applying for extension of stay varies according to nonimmigrant classification. (For further discussion of those procedures, refer to sections dealing with specific classifications.)

Certain nonimmigrants, mainly those in A and G status (except A-3 and G-5) and those in F status, do not have specific limitations on their period of stay in the United States. Their Forms I-94 are marked "D/S," which means "duration of status." With that notation on the Form I-94, an alien can remain in the United States as long as he or she is engaged in the activity for which he or she was admitted. (See further discussion of duration of status as it applies to aliens in F status in Section 4.)

2.7 Change of Classification

In some cases, it is possible to change from one nonimmigrant classification to another. For details, see Section 4 concerning F status, Section 5 concerning M status, Section 9 concerning J status, Section 10 concerning H status, and Section 11 concerning other nonimmigrant classifications.

2.8 Voluntary Departure

Voluntary departure is the permission granted at the discretion of INS for an alien to depart voluntarily from the United States at his or her own expense in lieu of deportation. [Act 242(B); 8 CFR 242.5] It is a means by which a person may avoid the negative consequences of deportation by leaving the United States voluntarily prior to the deadline set by INS. If voluntary departure has been granted, the alien's Form I-94 will be endorsed "voluntary departure" or "V/D," with the date by which the departure is supposed to take place. The Form I-94 might also be stamped "under docket control," referring to an INS procedure whereby an alien's status is monitored to ensure compliance with terms established by INS.

Voluntary departure is granted in various circumstances, including cases in which a nonimmigrant student found to have violated the terms of student status is permitted to remain in the United States to complete an academic term. Occasionally a nonimmigrant who needs additional time in the United States can secure permission to stay for an additional 30 days from the district office of the INS. This sort of permission is called "satisfactory departure" and is available in circumstances beyond the alien's control or other special circumstances (see Section 11.3.3). [8 CFR 214.1(c)(5)]

In the past, voluntary departure could be authorized for extended periods of time to a person who was unable to return home because of serious political or natural upheavals, but who was unable to maintain lawful nonimmigrant status. This was referred to as "extended voluntary departure" (EVD). In circumstances of national disaster or unrest, the attorney general and the secretary of state decided to allow citizens of a particular country to stay in the United States after their nonimmigrant status had expired. In recent years, citizens of Afghanistan, Ethiopia, and Poland were allowed to remain in the United States, subject to review, until the situation in their respective homelands improved. Advisers may occasionally see the notation "extended voluntary departure" in such passports. This category, however, has been eclipsed more recently by the concept of "temporary protected status" (TPS), which serves much the same purpose in a more regularized manner. [Act 244A] Advisers should be aware that these categories overlap. The attorney general has designated nationals of El Salvador, Kuwait, Lebanon, Liberia, and Somalia for TPS.

The category of most interest to advisers of foreign students and scholars is the designation "deferral of enforced departure," the term used to refer to the special status created for nationals of the People's Republic of China (PRC) by President Bush's Executive Order of 11 April 1990. [Executive Order 12711] This order allows PRC nationals who were in the United States before 11 April 1990 to stay in the United States until 1 January 1994 and to seek employment authorization as well as some additional benefits. These matters will be of continuing concern to advisers and PRC nationals as the expiration date of 1 January 1994 approaches. Advisers should be aware that the provisions of deferral of enforced departure are very different from those of other forms of delayed departure. See Section 13 and Appendix 13 for a more detailed discussion of these provisions.

2.9 Departure

Ordinarily, an alien who is issued a Form I-94 notifies INS of his or her departure from the United States by surrendering the Form I-94, Departure Record, at the point of departure. Officials of the transportation line are responsible for gathering the departure portion of the Form I-94 and presenting it with the departure manifest to the immigration authorities. Canadian immigration officers inspect Forms I-94 at Canadian land-border ports of exit, and U.S. immigration officers inspect them at Mexican land-border ports of exit. If for some reason a departing nonimmigrant is not in possession of a Form I-94, a duplicate departure notice is provided. The Forms I-94 are sent to the central office of INS, where the record of entry and departure is kept permanently. An alien under docket control is also provided with a postcard for notifying INS of the departure.

2.10 TAX CLEARANCE

Departing aliens, with certain exceptions, are formally required by the Internal Revenue Service (IRS) to obtain a Certificate of Compliance, or Sailing Permit, before departure from the United States. The Sailing Permit is evidence that the alien has paid whatever taxes may be due the U.S. government. In regulations that became effective for travel after 28 January 1991, the IRS has exempted F-1, F-2, H-3, H-4, J-1, J-2, and in some cases M-1 and M-2 visa holders from the requirement that they obtain a Sailing Permit. In order to be exempt from obtaining the Sailing Permit, F-1, F-2, H-3, H-4, J-1, and J-2 aliens must have received no income from U.S. sources other than that received: (1) as allowances to cover expenses incident to study in the United States (including expenses for travel, maintenance, and tuition); (2) as allowances to cover services and accommodations incident to study in the United States; and (3) in accordance with the employment authorization regulations applying to the alien's visa. In order to qualify for this exemption, M-1 and M-2 visa holders can have received no income except that which was received in accordance with employment authorization regulations applying to their visa category. [*Federal Register*, 28 January 1991]

SECTION 3

Responsibilities of Institutions Enrolling F-1 or M-1 Students

Marjory Gooding

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3.1 GENERAL

Federal regulations put into effect in 1987 placed significant responsibilities on students and schools in the administration of U.S. laws and regulations pertaining to F-1 and M-1 students. The regulations proposed in 1991 carry a mixed message from the INS. In some instances, the authority and responsibilities of designated school officials (DSOs) are expanded; in others, they are diminished.

The regulations and the INS internal guidelines known as Operations Instructions (OIs) require schools and their designated officials to follow specific recordkeeping and reporting requirements, effectively involving the schools as coadministrators with INS. Although these regulations seek to control abuses by mala fide schools, they also thrust bona fide schools and their officials into an arena that somewhat alters their professional roles as educators, counselors, advisers, and helpers of foreign students. It is critical for schools and school officials to comply with these regulations as counselor/educators rather than as policing agents. This approach will ensure that neither individual students nor their respective institutions are placed in legal jeopardy. Yet it will also enable schools to adhere to the principles that govern professional and institutional responsibilities to the students in their charge. Some of these issues and the legal, ethical, and educational questions they raise are discussed further throughout this section.

The following material incorporates the regulations and procedures set forth in the *Code of Federal Regulations* and the OIs, as well as ideas from the NAFSA Code of Ethics (1992).

3.2 APPROVAL OF SCHOOLS FOR ACCEPTANCE OF F-1 AND/OR M-1 STUDENTS

A school wishing to enroll nonimmigrant students under the provisions of Sections 101(a)(15)(F) and/or 101(a)(15)(M) of the Immigration and Nationality Act (the Act) must apply to INS for approval. The purposes of the application and approval process are to ensure that the school is a legitimate educational institution, that it provides instruction suitable to the needs of foreign students, and that it is able to and will act responsibly and in accordance with the immigration regulations in admitting foreign students, in maintaining records, and in submitting the reports required by INS to monitor the status of foreign students.

3.2.1 Application for school approval

The initial application, or petition, for school approval consists of Forms I-17 (reproduced in Appendix 3) and I-17A, a fee (see Appendix 1), and supporting documents, which vary depending upon the type of school. If the petition is for a school system, Form I-17B must be submitted. The application is filed with the INS district office having jurisdiction over the place in which the school is located. A school system that has schools or campuses in two or more INS districts must file separate petitions for its schools or campuses in each INS district. The application must state whether the school is seeking approval to enroll F or M students or both. [8 CFR 214.3(a)(1)]

Supporting documents vary widely with the category of school making the application (e.g., public school or school system, private secondary school, accredited public institution of higher education, vocational school). Although a personal interview is formally required of the school's representative, it is generally waived for most categories of schools. [8 CFR 214.3(d)] Petitions for school approval must include on Form I-17A the name, title, and sample signature of each DSO. [8 CFR 214.3(l)(2)] Petitions for school approval must also include a statement signed by each DSO affirming that the official has read the regulations relating to nonimmigrant students and intends to comply with those regulations. [8 CFR 214.3(l)(3)] Designated school officials are the only persons authorized to sign Forms I-20A-B, I-20M-N, and I-538, and otherwise to act officially in behalf of the school in carrying out the school's responsibilities under the immigration regulations pertaining to F-1 and M-1 students (see Section 3.3).

3.2.1.1 Approval of petition

The application, supporting documents, and other requirements are designed to determine whether the school is eligible for approval to enroll nonimmigrant students. To be eligible for approval, the school must establish that "(i) it is a bona fide school; (ii) it is an established institution of learning or other recognized place of study; (iii) it possesses the necessary facilities, personnel, and finances to conduct instruction in recognized courses; and (iv) it is, in fact, engaged in instruction in those courses." [8 CFR 214.3(e)(1)] If the petition is approved, the district director will notify the school on Form I-516 with a copy of I-17A attached. [OI 8 CFR 214.3(b)(9)] If a program (or school or campus part thereof) is not approved, the approval notice must indicate that the program is not approved. [OI 8 CFR 214.3(b)(10)] The approval will specify whether the school is approved for attendance by F-1 students, M-1 students, or both. The approval is valid only as long as the school continues to operate in the manner described in the petition. [8 CFR 214.3(e)(2)] Updates, changes, or corrections in DSOs, ownership, type of student enrolled, schools or campuses, address, or school term must be reported in accordance with OI 8 CFR 214.3(d).

3.2.1.1.1 Approval for F-1 classification. The regulations state that the following kinds of schools may be approved for attendance by F-1 students:

> (A) A college or university, i.e., an institution of higher learning which awards recognized bachelor's, master's, doctor's or professional degrees. (B) A community college or junior college which provides instruction in the liberal arts or in the professions and which awards recognized associate degrees. (C) A seminary. (D) A conservatory. (E) An academic high school. (F) An elementary school. (G) An institution which provides language training, instruction in the liberal arts or fine arts, instruction in the professions, or instruction or training in more than one of these disciplines. [8 CFR 214.3(a)(2)(i)]

3.2.1.1.2 Approval for M-1 classification. The following kinds of schools are considered to be vocational or nonacademic institutions and may be approved for attendance by M-1 students:

> (A) A community college or junior college which provides vocational or technical training and which awards recognized associate degrees. (B) A vocational high school. (C) A school which provides vocational or nonacademic training other than language training. [8 CFR 214.3(a)(2)(ii)]

"A student whose primary intent is to pursue vocational or technical training who takes English language training at the same school solely for the purpose of being able to understand the vocational or technical course of study" is classified as an M-1 student. [8 CFR 214.3(a)(2)(iv)]

3.2.1.1.3 Approval for both F-1 and M-1 classifications. Schools that provide instruction in the liberal arts, fine arts, language, religion, the professions, and in vocational or technical subjects may be approved to enroll both F-1 and M-1 students. Students who enroll in academic or language programs are classified as F-1 and are issued Form I-20A-B; students who enroll in vocational or technical training programs are classified M-1 and are issued Form I-20M-N. [8 CFR 214.3(a)(2)(iii)]

3.2.1.2 School code number and suffix

Upon initial approval to accept nonimmigrant students, each school is given a school code consisting of three letters identifying its INS district office, the designation "214F," and a four-digit number identifying the individual school or school system. Thus, an approved school in the Boston district might have the school code number "BOS 214F.0123."

INS also assigns permanent, consecutive numbers to all schools within each school system, other than those in elementary or secondary school systems. That is, campus number one is assigned the suffix ".001," campus number two ".002," and so on for the number of campuses or separately approved schools or programs within that school system. A school that is not a part of a school system is automatically assigned the suffix ".000." The same is true of an elementary or secondary school regardless of whether it is part of a school system. The Boston-area school cited above will have the complete school code number "BOS 214F.0123.000" if it is not part of a school system; if it is campus or school number one in a multicampus system having a single school code number, its complete number will be "BOS 214F.0123.001." [8 CFR 214.2 (f)(13)] An English-language program operated by a college or university and separate teaching institutions within a single campus, except at the elementary or secondary level, may qualify as schools within a school system. [OI 8 CFR 214.3(c)]

The complete school code number and suffix must be placed on all Forms I-20A-B and I-20M-N and on any other documents used to identify the school under INS's computerized record-keeping system.

3.2.2 One-time recertification process

The 1983 regulations provided for a one-time recertification of schools previously approved for attendance by F-1 and/or M-1 students "to enable the Service to update its records and review the approval of each school desiring to continue its approval, to determine whether it meets the eligibility requirements ... and has complied with the reporting requirements." [8 CFR 214.3(h)(2)(D)(ii)] This process allowed INS to withdraw school approval from institutions not in compliance with the regulations and, at the same time, to update its list of approved schools. As a result of the one-time recertification process, school approval may have been continued, withdrawn automatically, or proceedings may have been instituted to withdraw approval on notice.

3.2.3 Regular review of school approvals

The regulations specify that the district director shall review from time to time the approval granted to each school in order to determine whether the school continues to meet the basic eligibility requirements described in Section 3.2.1.1 and has complied with the record-keeping and reporting requirements described below in Section 3.5. INS regulations require that this review be conducted on a regular basis at least every 2 years, but in fact it has not been done on a regular basis. In the case of an established school with an untarnished record, a brief review may be conducted; in other cases the school may be sent materials with which to file a petition for continuation of its approval, and an in-depth review may be conducted based upon a new Form I-17 without fee and without all of the supporting documents required for initial approval. If the district director finds that approval should not be continued, proceedings for withdrawal on notice may be initiated (see Section 3.6.1). [8 CFR 214.3(h)(l)]

3.2.4 Denial of petition

If the school's petition is denied, the district director will inform the school of the reasons for the denial and that the school may appeal the denial according to the procedures described in 8 CFR 103. [8 CFR 214.3(f)]

3.3 DESIGNATED SCHOOL OFFICIALS

Only a DSO, or designated official, may sign Forms I-20A-B, I-20M-N, I-538, and other documents representing the approved school in matters dealing with F-1 or M-1 students.

3.3.1 Definition of designated school officials

For purposes of the regulations relating to F-1 and M-1 students, a DSO is defined as "a regularly employed member of the school administration whose office is located at the school and whose compensation does not come from commissions for recruitment of foreign students. An individual whose principal obligation to the school is to recruit foreign students for compensation does not qualify as a designated official." [8 CFR 214.3(l)(1)] A DSO may be a faculty member or regular staff member employed full or part time for the purpose of representing the school in F-1 or M-1 student matters. A faculty or staff member whose duties include recruiting foreign students may be a DSO if that official's duties are not primarily to recruit foreign students.

A DSO must be so designated by the "president, owner, or head of a school or school system," and that official "may not delegate this designation to any other person." [8 CFR 214.3(l)(1)] This specification underscores the importance attached by INS to the designation of school officials and to the responsibilities of these officials.

3.3.2 Limitation of number of designated school officials

"Each school or institution may have up to five designated officials at any one time. In a multicampus institution, each campus may have up to five designated officials at any one time. In an elementary or secondary school system, however, the entire school system is limited to five designated officials at any one time." [8 CFR 214.3(l)(1)] This limitation in the number of DSOs is meant to ensure control by the school's top authorities of the administration of the regulations regarding F-1 and M-1 students and to prevent irresponsible or improper actions by school officials. It poses problems for some schools, especially those that operate under a decentralized organizational structure. In many cases, documents prepared by some staff members must be reviewed and signed by other staff members who are officially DSOs.

3.3.3 Name, title, sample signature, and statement of designated officials

In any application for school approval, a school must submit on Form I-17A "the names, titles, and sample signatures of designated officials" and a statement signed by each designated official that the official has read the INS regulations relating to nonimmigrant students, change of nonimmigrant classification for students, school approval, and withdrawal of school approval (see Section 3.2.1). A school must submit to the district director a similar statement, name, title, and sample signature of any new DSO on Form I-17A within 30 days of such a designation. [8 CFR 214.3(l), (2), and (3)] It is suggested that the school submit a photocopy of the earlier Form I-17A with the new Form I-17A. The new Form I-17A should show the name, title, and sample signature of the new designated official in the numbered space of the designated official being replaced and should be signed by the president or chief executive officer of the school.

3.3.4 Responsibilities and role of designated school officials

Designated school officials represent and speak for the school in all matters relating to F-1 and M-1 students. Only a DSO may sign an immigration document for the school in a matter relating to F-1 or M-1 students. A school's approval to accept nonimmigrant students may be withdrawn for failure of a school official to comply with record-keeping and reporting requirements, for willful issuance by a school official of a false statement, for any conduct on the part of a school official that does not comply with the regulations, and for a number of other acts of malfeasance on the part of a school official (see Section 3.6.1). Designated school officials are charged with considerable responsibility to their schools for maintaining their schools' approval to enroll nonimmigrant students. Responsible institutions will select, train, support, and monitor DSOs with care. Funds to support these activities must be committed by any institution seeking to accept F-1 or M-1 students.

3.3.5 Relationship with INS

The OIs emphasize the need for INS officers to establish and promote a constructive relationship with DSOs and nonimmigrant students. In recognition of the influence of INS in determining students' attitudes and impressions of the United States, its officers are directed to be courteous, respectful, and sensitive to the students. Furthermore, INS officers are directed to meet at least annually, where practicable, with DSOs and students "in a friendly, cordial, and sociable atmosphere conducive to promoting a mutual attitude of cooperation and assistance." The director of outreach at INS's central office is also charged with responsibility for setting up student and school workshops to discuss relations. [OI 8 CFR 214.3(g), (h), and (i)] By these measures, INS hopes to maintain good relationships between DSOs and INS officers. It is questionable what effect these measures have on adjudications of student applications, many of which are conducted primarily by INS officers at regional service centers (who are inaccessible to the public) and at some ports of entry (who are also inaccessible to DSOs and students).

3.4 CONTROLS ON ISSUING FORMS I-20A-B AND I-20M-N

The regulations are precise about the controls that approved schools must exercise in issuing Forms I-20A-B and I-20M-N. These controls are designed to prevent abuses by mala fide schools, unscrupulous recruiters, schools that appear to be interested only in the tuition money of foreign students, and others who have in the past abused the privilege of enrolling nonimmigrant foreign students.

3.4.1 Specific conditions of issuance of Forms I-20A-B and I-20M-N

According to the OIs, "Forms I-20 are to be issued only to aliens who are F-1 or M-1 students or who are seeking F-1 or M-1 status." [OI 8 CFR 214.2(f)(49)(ii)] This provision was omitted from the 1987 revision of the OIs, but it is assumed the policy is still in effect (see note). Forms I-20 may not be issued to other individuals, such as lawful permanent-resident students, who may request these forms for such purposes as obtaining foreign exchange or passport renewal.

A Form I-20A-B or I-20M-N may be signed and certified only by a DSO and only after page 1 of the form has been completed in full. The form must be issued in the United States. School officials may not sign blank forms and allow recruiters or other unauthorized persons to complete and issue the forms upon recruiting a student. A Form I-20A-B or I-20M-N issued by a school system must specify which school within the system the student will attend. [8 CFR 214.3(k)]

In addition, a Form I-20A-B or I-20M-N may be issued only after the following four conditions have been met [8 CFR 214.3(k)]:

1. "The prospective student [must make] a written application to the school." An oral or telephone application, or an application in person without a written request for admission to the school, is not acceptable. An application prepared by a representative of the student on behalf of the student does not satisfy the requirement unless it is made on behalf of a scholarship student by an official agency of the student's government or it is made on behalf of a student by the student's parent or legal guardian. [1985 OI 8 CFR 214.2(f)(49)(v)—This paragraph was omitted from the 1987 OIs, but it is assumed the policy is still in effect.]

2. "The written application, the student's transcripts or other records of courses taken, proof of financial responsibility for the student, and other supporting documents [must be] received, reviewed, and evaluated at the school's location in the United States." This requirement refers to "transcripts or other records of courses taken" that are appropriate to the particular course of study to which the student is being admitted, and does not necessarily require that all students submit transcripts or course records if those records are not relevant to the courses for which the students are applying. The regulation specifically requires that the school receive evidence of financial responsibility for the student in all cases and that the application and supporting documents be reviewed at the school in the United States, not merely by a recruiter or other individual who is not physically present at the school.

Note:
The 1983 student/schools regulations included revisions to 8 CFR 214.1(b), 214.2(f), 214.2(m), 214.3, 214.4, 248.1(c) and (d), and 248.3(b) and (d). Operations Instructions elaborating on these regulations were published on 24 May 1985 and were numbered OI 214.2(f)(1-50), 214.2(m)(1-4), 214.3(a-m), 214.4(a-f), and 248.7(a-f). The revised student/schools regulations of 22 April 1987 changed only parts of 214.2(f)(4-10) and 214.3(g), leaving the remainder of the existing regulations intact. Operations Instructions published on 24 December 1987 to implement the 1987 regulations revised only parts of OIs 214.2(f) and 214.3(g), leaving other parts apparently intact, and using a slightly different numbering system than that of the 1985 OIs. Supplemental operating instructions were published in July 1988. Until the INS publishes an integrated version of the regulations and the OIs, advisers must work from many sources. Some of the citations in Sections 3, 4, and 5 of this volume can be understood only in this context.

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3. "The appropriate school authority [must determine] that the prospective student's qualifications meet all standards for admission." The "appropriate school authority" is any person or agency authorized by the school's administration to make such decisions. In practice it is usually the admissions officer who makes the decisions. That authority must determine that the applicant meets all standards appropriate to the school or program to which the student is being admitted.

4. "The official responsible for admission at the school [must accept] the prospective student for enrollment in a full course of study." This does not necessarily mean that there must be one official responsible for admission at the school and/or that that particular official must approve the admission; it does mean that the student must be officially accepted for enrollment in the school by whatever person, agency, or procedure is appropriate for admission to the particular school or program. It also means that the student must be accepted for the purpose of enrolling in a full-time program of study and not as a part-time or casual student.

It is not permissible to issue a provisional or conditional Form I-20, indicating that a student will enroll after fulfilling certain conditions, such as successfully completing an intensive English-language program. Only when the appropriate school authority has determined that a prospective student has met all requirements for admission to that school and, consequently, has been accepted for a full course of study, may the I-20 be issued. [1985 OI 8 CFR 214.2(f)(49)(iv)—This paragraph was omitted from the 1987 OIs, but it is assumed the policy is still in effect.] Schools that provide full-time or supplementary English-language instruction may issue Forms I-20 to students who have been accepted for a full course of study combining academic and language study until the student attains the language proficiency to pursue a full-time academic program.

No fees may be charged for the issuance of Forms I-20. Once the school authority has determined that a prospective student has met all standards for admission and has fulfilled the other requirements of 8 CFR 214.3(k) (written application, transcripts, and financial support), a DSO must issue the form. INS takes the position that requiring a fee for issuing Forms I-20 may constitute exacting a fee for the performance of an act required by federal regulation, which is a federal crime. [1985 OI 8 CFR 214.2(f)(49)(iii)—This paragraph was omitted from the 1987 OIs, but it is assumed the policy is still in effect.] Schools may assess an application fee, but once a student meets all requirements of the school for admission and of the regulations for issuing Forms I-20, no fee may be assessed for issuing the form.

If a school system operates in more than one INS district, Forms I-20 may be issued centrally by a DSO, even though 8 CFR 214.3(a)(1) requires the filing of separate Forms I-17 for school approval, provided that the school official can certify awareness of all costs incurred by students at all schools within the school system. [1985 OI 8 CFR 214.2(f)(49)(vi)—This paragraph was omitted from the 1987 OIs, but it is assumed the policy is still in effect.]

3.4.2 Consequences of failure to meet conditions of issuance of Forms I-20A-B or I-20M-N

"Failure to comply with the procedures for issuance of Forms I-20A or I-20M" as detailed above is specifically given as a cause for withdrawal on notice of a school's approval to enroll nonimmigrant students (see Section 3.6.1). [8 CFR 214.4(a)(1)(xvii)] It is clear that by these regulations INS means to curb abuses by mala fide schools and unscrupulous recruiters.

3.4.3 Legal culpability of designated school official

In signing the Form I-20A-B and/or I-20M-N, the school official certifies "under penalty of perjury" that:

> All information provided above in items 1 through 8 was completed before I signed this form and is true and correct. I executed this form in the United States after review and evaluation in the United States by me or other officials of this school of the student's application, transcripts, or other records of courses taken and proof of financial responsibility, which were received at the school prior to the execution of this form; the school has determined that the above-named student's qualifications meet all standards for admission to the school; the student will be required to pursue a full course of study as defined by 8 CFR 214.2(f)(6) [or 214.2(m)(9)]; I am a designated official of the above-named school and I am authorized to issue this form." [Certification statement, Form I-20A-B and I-20M-N]

Successful prosecution for perjury would require INS to prove that the school official willfully and knowingly certified to false information with the intent to deceive. Unintentional omissions and misinterpretations do not constitute perjury. U.S. law provides severe penalties for willfully making a false statement to a government official. [18 U.S.C. 100] While it is unlikely that INS would pursue a criminal charge for perjury or for making a false statement except in extreme cases, school officials should be aware of this possibility and of the importance INS attaches to the proper certification and signing of Forms I-20A-B and I-20M-N.

3.4.4 Enrollment of aliens in other than F-1 or M-1 status

It should be noted that all of the requirements referred to above apply only to the admission and enrollment of students who are issued Forms I-20A-B or I-20M-N and who are in the United States for the purpose of attending school under the provisions of Sections 101(a)(15)(F) or 101(a)(15)(M) of the Act. Neither the immigration regulations nor any other laws or regulations address the school's legal responsibility regarding the admission and enrollment of aliens who hold any other immigration status except that of J-1 exchange visitors (see Section 9), or who are out of status. The legal status of those aliens not in F, M, or J status is a matter between the aliens and INS. A school does not jeopardize its approval to enroll F-1 or M-1 students by admitting and enrolling other aliens, regardless of their status. Advisers may wish to give careful counsel to B-2 visitors for pleasure regarding their length of stay in the United States and the likelihood of success if they apply to change from B-2 to F-1 status (see Section 4.12.1.1).

3.5 RECORD-KEEPING AND REPORTING REQUIREMENTS

The regulations are specific about the records schools must keep on F-1 and M-1 students, about the requirement that schools must release to INS officers specific information concerning the status of individual students, and about the requirements for periodic reporting to INS regarding the status of all F-1 and M-1 students enrolled. In particular, these regulations place responsibility on schools enrolling foreign students to report on their status and to provide information to the INS computerized record-keeping system that monitors their status. Although the regulations specify certain kinds of records and information that must be kept and released to INS, they do not require the release of other kinds of records and information to INS or any other agency. School officials are rightly concerned about the legal, ethical, and educational ramifications of releasing confidential, personal, academic, or other information to a government agency charged with enforcement of the law, and they resist any erosion of their relationship of confidence and trust with their students. Responsible school officials, therefore, must both comply with the regulations and serve their students and their institutions as counselor-educators rather than policing agents. The following discussion offers guidance in maintaining that delicate balance between the quasi-enforcement role required by federal regulations and the helping role basic to the relationship between educators and their students.

3.5.1 Required records and documents

The regulations state that "an approved school must keep records containing certain specific information and documents relating to each F-1 or M-1 student to whom it has issued a Form I-20A or I-20M while the student is attending the school and until the school notifies the Service" on Form I-721, the Student Status Form, that the student is not pursuing a full course of study (see Section 3.5.3). [8 CFR 214.3(g)(1)] Note that this requirement applies only to "each F-1 or M-1 student to whom [the school] has issued a Form I-20A or I-20M." It does not apply to F-2 or M-2 dependents, exchange visitors, any other aliens, documented or undocumented, or U.S. citizens. An interesting question is raised, however, by the reporting requirements, which mandate that schools note on the Form I-721 all the F-1 and M-1 students attending that school, whether or not they issue Forms I-20 to them. [8 CFR 214.3(g)(2); OI 8 CFR 214.3(k)(1)] By doing so, the regulations require schools to make reports, under threat of withdrawal of school approval for noncompliance, on students for whom they are not required to keep records. The regulations appear to require schools to report on students about whom the DSO may have no knowledge, personal or documentary, and to keep records about students unknown to them and for whom they are not required to keep records (see Sections 3.5.2 and 3.5.3.2).

The school must maintain records on each F-1 and M-1 student during the entire time the student attends the school and until the school reports to INS the student's termination, failure to carry a full program of study, or failure to continue enrollment. [8 CFR 214.3(g)(2)] Therefore, student files may not be destroyed immediately after the student leaves school, but must be maintained with the required information until the school completes its required reports to INS. Since the INS has not issued a Form I-721 since 1988, advisers are cautioned to keep student records until the future of the I-721 is clarified (see Section 3.5.3).

Although the regulations require that schools maintain specified records and documents, they do not state or imply that the records and documents must be maintained in a centralized location. Most such records and documents are maintained by schools in scattered locations, such as admission offices, records offices, foreign student offices, dean's offices, and similar places. The records and documents need not be collected and centralized, and schools may retain their present record-keeping practices provided the required information is available at some location within the school to which the DSO has access.

"The school must keep a record of having complied with the reporting requirements for at least 1 year." [8 CFR 214.3(g)(1)] The reporting requirements referred to here are the reports submitted on Form I-721 (see Section 3.5.3). Schools must keep a record of having made these reports for 1 year, presumably by keeping copies of the reports submitted to INS. A school may destroy the records and documents on any individual F-1 or M-1 student after having reported on the Form I-721 that the student has terminated or is not carrying a full program of study; however, schools must maintain a record of having made that report for 1 year after having done so.

"If a student who is out of status is restored to status, the school the student is attending is responsible for maintaining these records following receipt of notification from the Service that the student has been restored to status." [8 CFR 214.3(g)(1)] A school may have destroyed its records on an F-1 or M-1 student after reporting to INS that the student was not carrying a full course of study, but if that student is restored to status by INS to attend the same school, the school must maintain required records from the time of reinstatement until the school again notifies INS that the student is not carrying a full program of study.

The information and documents that the school must maintain on each F-1 and M-1 student to whom it has issued Form I-20A-B or I-20M-N are the following [8 CFR 214.3(g)(1), *Federal Register*, 22 April 1987, p. 13229]:

"(i) Name." This information is contained in the passport and on Forms I-94, I-20A-B or I-20M-N, and I-20 ID Copy.

"(ii) Date and place of birth." This information is contained in the student's passport and on the application for admission.

"(iii) Country of citizenship." This information is contained in the passport and on the Forms I-94, I-20A-B or I-20M-N, and I-20 ID Copy.

"(iv) Address." This means a residence address and not a post office box number [OI 8 CFR 214.3(j)], as it is intended to enable INS to locate the student physically. Schools are required to make a good-faith effort to obtain and maintain this information and to have reasonable procedures in operation that will collect and update the information in a systematic manner. However, a school cannot be penalized for failure to have current and accurate addresses for all of its F-1 or M-1 students if it does have such procedures in operation but individual students fail to cooperate, either purposefully or by neglect or omission. In such cases, students are directly responsible to INS and the school cannot be held liable.

"(v) Status, i.e., full-time or part-time." This information should be readily available during any regular school term after the student has registered and the school has processed its enrollment records. Note that a student may be considered, for this purpose, to be enrolled in a full-time program in certain circumstances, although the formal registration data may not so indicate. One such example would be during an authorized vacation period, if the student was enrolled in a full-time program during the preceding term and is eligible and intends to enroll in the same full-time program in the succeeding term. Another example would be an undergraduate student who was advised to enroll for less than 12 hours by a DSO for valid academic reasons. The most common case is a student enrolled in a graduate program who has finished all course work and is spending a semester preparing a thesis or dissertation. The need to maintain substantiating documentation in such circumstances is evident. (See the discussion in Section 4.5.2. Also see Section 3.5.3.1 regarding the exercise of care in determining which students are and are not pursuing full programs of study.)

"(vi) Date of commencement of studies." This information refers to the date the student began a full-time course of study as an F-1 or M-1 student after having been issued Form I-20A-B or I-20M-N by the school.

"(vii) Degree program and field of study." If a student is not enrolled in a specific degree program, the school's records should indicate the specific nondegree educational program in which the student is engaged. Not all students intend to complete a degree or certificate program, but they must have a specific educational objective. Therefore a "special student" may enroll in order to make up certain academic deficiencies or to apply course work toward a course of study at another school, provided the student pursues a full course of study at the school attended. [1985 OI 8 CFR 214.2(f)(15)—This paragraph was omitted from the 1987 revision of the OIs, but it is assumed the policy is still in effect.] If a student has not decided or declared a specific major field or course of study, "undecided" or "undeclared" should suffice to identify the field of study.

"(viii) Whether the student has been certified for practical training and the beginning and end dates of certification." This regulation refers to practical training but not off-campus work authorization. The INS published the final rule for F-1 practical training on 29 October 1991. Postcompletion practical training employment authorization now takes the form of an Employment Authorization Document (EAD). A simple way to make a record of this authorization would be to photocopy the EAD (see Section 4.9.3).

"(ix) Termination date and reason, if known." This refers to the date a student terminates attendance at the authorized school. In those cases in which a student simply stops attending classes and disappears, a reasonable estimate of the date of "termination" should be sufficient to meet the requirements of the regulations. The reason for termination of attendance is a required part of the records only if it is known, so schools need not make special efforts (for immigration purposes) to determine the reasons for the termination.

"(x) The documents referred to in paragraph (k) of this section." These are the documents and information related to the student's qualifications for admission to the school as an F-1 or M-1 student (see Section 3.4.1). These admission documents and records must be maintained while the student is enrolled and until the school reports to INS that the student is no longer pursuing a full course of study.

"(xi) The number of credits completed each semester." This requires the school to keep accurate records for previous semesters as well as the semester in progress. Since there is no requirement that one of the DSOs be custodian of the information and documents the school must maintain and make available to INS, this information could be maintained by the registrar or records office and be made available to a DSO as needed.

"(xii) A photocopy of the student's I-20 ID Copy." It would be prudent to make the photocopy not only when the student initially enrolls at the school, but every time a notation (transfer, extension of stay, employment, practical training) is made on that document. It can be assumed that this reference in the regulations now refers to the I-20 ID (Student) Copy, i.e., pages 3-4 of the I-20A-B.

If a student refuses to provide the school with the information necessary for the school official's report, the OIs state that the school official should bring this to the attention of INS, which may then request the information directly from the student. [OI 8 CFR 214.3(j)]

3.5.2 Release of information from records

A DSO is required to make available to any INS officer upon request and without subpoena any of the documents and records specified in 8 CFR 214.3(g)(1) (see Section 3.5.1). Information concerning an individual student must be provided within 3 working days; information on any class of students must be provided within 10 working days, although INS will first attempt to obtain information concerning a class of students from its record system. An important change in the 1987 regulations provides that INS's request for information must be in writing if the school asks for a written request. If INS seeks information on a student who is being held in custody, the school must reply orally on the same day but may request INS to provide written notification that the request has been made. [8 CFR 214.3(g)(1), *Federal Register*, 22 April 1987] Failure to comply with the request for information constitutes cause for withdrawal on notice of the school's approval to enroll nonimmigrant students. [8 CFR 214.4(a)(1)(i)] It is important to understand that regulations require the release of only the information specified and only to an INS officer in the manner described. They do not require or authorize the release of any information to anyone else, including representatives of other government agencies who may occasionally ask for information about students from abroad. These regulations, on the other hand, have no bearing on the release of "directory information" as set forth in the Family Educational Rights and Privacy Act of 1974, also known as the FERPA, or the Buckley Amendment, PL 93-380. According to the regulations,

> "Directory information" means information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to, the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended. [34 CFR 99.3]

INS officers are instructed that requests for information about large numbers of students at a school are burdensome and its officers should request only information that is needed and not available from its own data. [OI 8 CFR 214.3(l)(3)] Such requests, to the extent possible, should be made in writing, using the wording and format supplied by the OIs. [OI 8 CFR 214.3(l)(4)]

Although regulations require that records be kept for all F-1 and M-1 students to whom the school has issued Forms I-20, they do not require that records be kept for other students. Designated school officials are not required by regulations to keep records of any nature about students who are lawful permanent residents, students who may hold other nonimmigrant classifications (such as F-2 or J-1), or students who may have been issued Forms I-20 by other schools. A careful reading of this regulation, then, leads to the conclusion that school officials are required to make available to INS upon request only that information the school official must keep, and not information about a student who has not been issued the Form I-20 by that school (see Section 3.5.1).

INS asserts, however, that the certifications on page 2 of Forms I-20A-B (on page 1 of the 27 April 1988 revision of Form I-20) and I-20M-N signed by all F-1 and M-1 students authorize schools to release to INS information necessary to determine a student's immigration status, even if the school did not issue a Form I-20 to that student. [OI 8 CFR 214.3(l)(1)] This seems inconsistent with the constraints on release of school records imposed by FERPA. It also does not make clear the distinction between "authorize" and "require." Nevertheless, INS's general counsel has advised INS that this certification or authorization serves as a consent to release records under FERPA, shielding the school and its officials from being in violation of the law. Furthermore, the general counsel has advised that neither the school official nor the INS officer needs physical possession of the certification when making or complying with the request for information. [OI 8 CFR 214.3(1)(2)] With good reason, INS anticipates concerns by school officials about interpretation of FERPA and indicates that, if problems are not resolved at the district level of INS, assistance may be requested from the INS central office, adjudications division, through the regional office. [OI 8 CFR 214.3(l)(2)(iii)]

Many schools have advised their school officials that the OIs (which are internal INS guidelines and do not have the force and effect of regulations or laws) cannot and do not override the strict requirements of FERPA and, consequently, that the officials should abide by FERPA in cases of requests for information for which a written consent to release information has not been received by the school. Undoubtedly, this question will need to be resolved in a court of law. For the time being, therefore, school officials might provide information to INS only on those students to whom the school has issued Forms I-20 and, therefore, about whom the schools are required to keep records. Since they are not required to keep records on other students, in particular those to whom other schools may have issued Forms I-20 (see Sections 3.5.1 and 3.5.3.2), specific requests for name, address, and other enrollment data might be referred to the registrar's office, which can provide directory information in accordance with FERPA. Other information specified in 8 CFR 214.3(g)(1), however, should not be provided without specific written consent from the students concerned.

Whether a school official should provide information or is under obligation to inquire of other offices or units of the institution to ascertain this information about students for whom the school is not required to maintain records for immigration purposes is a decision to be made in consultation with the registrar and, presumably, the general counsel of the institution. School officials should always resolve such dilemmas in view of the legal, ethical, and educational considerations discussed below in Sections 3.5.2.1, 2, and 3.

3.5.2.1 Legal considerations

FERPA prohibits schools from releasing information other than directory information (specifically defined therein) from school records to most entities outside the school unless the student has signed a consent for the release of the specific information to a specific entity. INS takes the position that the consent for the release of information from school records signed by each F-1 and M-1 student on page 1 of Form I-20A-B or I-20M-N constitutes "an effective method of insulating the school from an allegation that it is in violation of the Buckley Amendment" and that "neither the school official nor the Service officer needs physical possession of the consent when a request for information under the reporting requirements is made." [Introductory remarks to 1983 student regulations, *Federal Register*, 5 April 1983, p. 14578] Some institutional attorneys disagree with that interpretation, however, and hold that a consent to the release of information from school records must be more specific and must be in the physical possession of the school in order for it to be an effective and legal consent. This conflict in the interpretation of FERPA can ultimately be resolved only in a court of law, and no precedents exist at present.

In addition to the specific provisions of FERPA, schools and school officials must be alert to the possibility of a student's bringing suit against the school and/or school official for invasion of privacy and violation of the traditional and accepted concepts of confidentiality of records and information that exist between an individual and an adviser or counselor. Such legal questions are even more problematic than those raised by FERPA, and they are disturbing to school officials.

In order to protect themselves as much as possible from legal actions under FERPA or wider concepts of privacy and confidentiality, schools and school officials are advised to establish and follow regular and consistent procedures and guidelines governing the release of information about students to INS. The procedures and guidelines that follow are suggested as being in compliance with a reasonable interpretation of INS regulations regarding release of information, until legal precedents exist.

1. Schools should not release information of any kind other than directory information about students to INS, except upon receipt of a written request for specific information. Oral requests should be honored only when a student is in custody, or under unusual conditions in which an immediate response would clearly be in a student's interests. Nonspecific requests for information should not be honored.
2. School officials should release information pursuant to regulations only to INS and only about students to whom they have issued Forms I-20A-B or I-20M-N, and not about any other aliens who may be enrolled, unless those other aliens have given a written release of the information or the institution's legal counsel advises release of the information.
3. School officials should release information to INS only about the specific items listed in the regulations in 8 CFR 214.3(g)(1).
4. School officials should release information only from school records and not from the personal knowledge school officials might have about such matters as students' employment, marital status, life-styles, and personal conduct (see Section 3.5.2.2).
5. School officials should make a careful search of the records to ensure an accurate response.

3.5.2.2 Ethical considerations

The role of DSO for the administration of the school's responsibilities under the immigration regulations is usually only a minor part of a school official's broader institutional role as adviser, counselor, and helper to the student. In their roles as advisers, counselors, and helpers, school officials receive information not related to the immigration status of the student that is often confidential and personal. The ethics of advising, counseling, and helping require the preservation of the confidential nature of this information. Violations of confidence constitute serious breaches of ethical and professional conduct.

Compliance with the guidelines outlined in Section 3.5.2.1 forms the foundation for compliance with ethical and professional standards of conduct. In addition, school officials should make known to all students precisely what information about them is required to be released to INS under the immigration regulations. It is essential that students have a clear understanding of this legal responsibility of the school and the school official in order to protect the integrity of the relationship between the student and the adviser. School officials must carefully limit their disclosures of information to INS to those required under the regulations and that are fully known to their students. Officials must scrupulously preserve the confidentiality of all other information about the student.

The NAFSA Code of Ethics (NAFSA, 1992) speaks to these issues:

> Members have a responsibility to balance the wants, needs, and requirements of program participants, institutional policies, laws and sponsors, having as their ultimate concern the long-term well being of international educational exchange programs and participants. In relationships with students and scholars, members shall maintain the confidentiality, integrity, and security of student records and of all communications with students; secure permission of the student or scholar before sharing information with others inside or outside the organization, unless disclosure is authorized by law or institutional policy, or mandated by previous arrangement. Members who advise foreign students and scholars shall:
>
> - Fully inform students, at appropriate times, of the types of information the institution is required to furnish to governmental agencies, and furnish those agencies with only that information required by law and regulation
> - Decline to reveal confidential information about foreign students and scholars even if requests for such information come from law enforcement agencies or organizations appearing to have thoroughly benevolent motives
> - Refrain from invoking immigration regulations in order to intimidate students or scholars in matters not related to their immigration status.

3.5.2.3 *Educational considerations*

School officials must constantly bear in mind that their roles, the roles of the schools employing them, and the roles of the students they advise are educational in nature. Violations of confidences and unauthorized releases of information are sure ways to destroy the educational relationship between the institution and its students, undermining the learning environment and the very purpose of international educational exchange. With the exception of specific legal requirements, school officials must be vigilant in maintaining the students' confidence in their roles as counselor-educators.

In dealing with INS and individual INS officers, school officials should continually emphasize the importance of the educational process and encourage INS officers to observe and respect it. The OIs, in fact, restate for INS officers the commitment of the U.S. government "to the value of international student exchange activities." [OI 8 CFR 214.3(i)] Most INS officers are reasonable and will not demand actions by a school official that will erode or destroy the official's educational role. Upon encountering an INS officer who is not so inclined, school officials might be prudent to appeal to higher authorities—the district director, regional officers, or INS central office staff—in an attempt to establish procedures and parameters for enforcement and administration of the immigration regulations that will not affect the educational relationship between students and their schools and school officials.

3.5.3 Reporting requirements

Federal regulations state:

> At intervals specified by the Service but not more than once a term or session, the Service's processing center shall send each school (to the address given on Form I-17) a list of all F-1 and M-1 students who, according to Service records, are attending that school. A DSO at the school must note on the list whether or not each student on the list is pursuing a full course of study and give, in addition to the above information, the names and current addresses of all F-1 and M-1 students, or both, not listed, attending the school and other information specified by the Service as necessary to identify the students and to determine their immigration status. The DSO must comply with the request, sign the list, state his or her title, and return the list to the Service's processing center within 60 days of the date of the request. [8 CFR 214.3(g)(2)]

In the event the INS central office does not send the list to all approved schools as frequently as permitted by the regulation, a district director may send it to any number of schools in the district at the intervals permitted. [1987 OI 8 CFR 214.3(g)(i)(1)]

These requirements, which radically changed the nature of reporting to INS by school officials, were first implemented in the spring of 1985. At that time they were combined with a one-time registration of all F-1 and M-1 students in the United States so that INS could complete and correct its student/schools data base. The list to which the regulation refers was Form I-721, the Student Status Form (a computer printout). The Form I-721 was sent to all schools for the second time in spring 1988 and again to a small test group of ten schools in the fall of 1989.

Numerous problems have plagued the issuance of Form I-721, despite the fact that NAFSA and INS have a long history of cooperation on the process. Problems included incorrect data on the first issuance; and, more discouragingly, incorrect data on the 1988 and 1989 forms, despite the efforts by school officials to provide correct and updated information that should have been incorporated. Correspondence between NAFSA and INS indicates that INS has made the decision to discontinue the use of the I-721 as a means to gather information on F-1 and M-1 students. [Letter from John F. Reichard to James Puleo of 27 November 1990] The correspondence further indicates that the development of a new system to meet the responsibility to Congress and the public to monitor and report on the foreign student population in this country will be a joint effort by INS and NAFSA. However, the NAFSA recommendations on an alternate reporting system are based on the condition that INS eliminate the F-1 extension of stay regulations in 8 CFR 214.2(f)(7) since an effective school reporting system would make these regulations redundant. The final rule for F-1 extension of stay regulations were published on 29 October 1991, but the future of an alternate reporting system is unclear.

Regardless of the shape the new system takes, advisers should note that the regulations require that the school must maintain copies of the reports made to INS for at least 1 year in order to be able to demonstrate on demand that it has complied with these requirements. [8 CFR 214.3(g)(2)]

If INS sends a list of students for a report between school terms or during or shortly after a registration period for a new school term, it may not be possible for the school to provide the required information on a current basis. In such a case the school should either request an extension of the reporting time or exercise its discretion to make the report based on information from the preceding school term. Since the reporting form provides INS with critical data regarding the status of every F-1 and M-1 student in the United States, it is incumbent on school officials to be particularly diligent in responding to the form. To do otherwise would jeopardize students about whom data is misreported as well as jeopardize the school's approval to enroll nonimmigrant students. In several areas the codes may be subject to varying interpretations, or the DSOs may be encouraged, but not required, to make certain reports. The following discussion offers guidance concerning compliance with the requirements of the reporting form, whatever precise form it may take.

3.5.3.1 Reporting students who are not (or appear not to be) pursuing a full course of study

The requirement that a school official must note on the list whether or not each student on the list is pursuing a full course of study is relatively simple in most cases. However, school officials must exercise care in making such notations, as a report that a student is not carrying a full program of study may result in INS initiating an investigation and possibly taking action against the student. In most schools, the information required for this report will be taken from school records. School officials will need to give careful attention to the case of each student who the record indicates is not enrolled full time, but who might in reality be pursuing a full course of study for purposes of the immigration regulations.

A discussion of the meaning of "a full course of study" is presented in Section 4.5.2. School officials are urged to refer to that discussion when preparing the reporting form.

3.5.3.2 Reporting students not on INS lists

In addition to noting on the reporting form whether each student is or is not pursuing a full course of study, the school official is required to provide "the names and current addresses of all F-1 or M-1 students, or both, not listed, attending the school and other information specified by the Service as necessary to identify the students and to determine their immigration status." [8 CFR 214.3(g)(2)]

The dilemma presented by this requirement is described in Section 3.5.2. Regulation 8 CFR 214.3(g)(1) requires a school to keep records only on those students to whom it has issued Forms I-20A-B or I-20M-N, yet 8 CFR 214.3(g)(2) requires school officials to add to the reporting form supplement the names and addresses of F-1 and M-1 students attending the school to whom the school has not issued Forms I-20. If the school is not required to keep records on these students, it cannot be required to make reports on them, and it will not have the information in its records as to their F-1 or M-1 status.

In all cases of reporting and release of information to INS, regulations require only the release of information from school records as specified in 8 CFR 214.3(g)(1), and not from a school official's personal knowledge of a student's activities (see 8 CFR 214.3[g][1] and Section 3.5.1). Items of information that are not part of a school's records cannot be demanded by INS except through a process of subpoena of a school official to give written or oral testimony.

3.5.3.3 Discretionary reporting of certain items

School officials are "encouraged" (but are not required) by INS to report out-of-status students and students who have terminated their studies to the district director between reporting periods, that is, in addition to the required reporting on the reporting form. [1987 OI 8 CFR 214.3(g)(i)(1)] School officials should exercise restraint in this regard in view of their role as counselor-educators, discussed above in Section 3.5.2.3. School officials also are invited (but not required) to make corrections in the data provided on the reporting form. If a school official has the time and resources and is able to provide such corrections without violating the legal, ethical, and educational considerations noted in Section 3.5.2, such action could be helpful to the students concerned.

3.6 WITHDRAWAL OF SCHOOL APPROVAL

3.6.1 Withdrawal of school approval on notice (for cause)

The regulations authorize INS to initiate proceedings for withdrawal of a school's approval to enroll nonimmigrant F-1 and M-1 students "on notice," which means withdrawal for a specific cause. Seventeen specific grounds for withdrawal are enumerated in the regulations. [8 CFR 214.4(a)(1)] An action for withdrawal on notice affords the school the protections of due process of law, preventing arbitrary and improper withdrawals of approval. District directors are instructed to give special emphasis to instituting proceedings to withdraw approval from schools not in compliance with the regulations in an effort to eliminate bad-faith schools from the list of those authorized to enroll F-1 and M-1 students.

3.6.1.1 Grounds for withdrawal of school approval on notice

The regulations provide that a school's approval to enroll nonimmigrant F-1 or M-1 students may be withdrawn on notice "if the school or school system is no longer entitled to the approval for any valid and substantive reason including, but not limited to, the following [8 CFR 214.4(a)(1)]:

"(i) Failure to comply with 8 CFR 214.3(g)(1) without a subpoena." Regulation 8 CFR 214.3(g)(1) requires that schools maintain specific records and information on F-1 and M-1 students and that schools release that information to any INS officer upon demand (see Sections 3.5.1 and 3.5.2). The requirements for written notice (oral in cases of students in custody) and the time frames for schools to respond, as noted above, must be observed by both INS and the school.

"(ii) Failure to comply with 8 CFR 214.3(g)(2)." Regulation 8 CFR 214.3(g)(2) refers to the requirement to report periodically on computer-generated lists (Forms I-721 or its successor) whether students on the list are pursuing full courses of study and to add to the list the names and addresses of other F-1 and M-1 students who are enrolled. A reasonable interpretation of that requirement may mean following the guidelines outlined in Sections 3.5.2 and 3.5.3.

"(iii) Failure of a designated official to notify the Service that an F-1 student intends to transfer to another school as required by 8 CFR 214.2(f)(8)(ii)." Although this reason is obsolete under the regulations that became effective on 22 May 1987, presumably it continues to apply to such failures that may have taken place prior to that date. This is unlikely to affect advisers now.

"(iv) Willful issuance by a designated official of a false statement or certification in connection with a school transfer or an application for employment or practical training." Note the inclusion of the word "willful" in this provision.

"(v) Any conduct on the part of a designated school official which does not comply with the regulations." This ground for withdrawal of school approval is distressingly vague and all-inclusive. Since the regulations in most circumstances are quite specific, a reasonable interpretation of this provision would be quite narrow and limited in scope. It is unlikely that INS would initiate or be successful in proceedings for withdrawal on notice for minor, infrequent, or innocent violations of the regulations.

"(vi) The designation as a designated official of an individual who does not meet the requirements of 8 CFR 214.3(l)(1)." This refers to the designation as a school official of a person who is principally a recruiter, who is not regularly employed at the location of the school in the United States, and/or who otherwise does not qualify as a DSO as described in Section 3.3.1.

"(vii) Failure to provide the Service with the names, titles, and sample signatures of designated officials as required by 8 CFR 214.3(l)(2)." See Section 3.3.3.

"(viii) Failure to submit statements of designated officials as required by 8 CFR 214.(l)(3)." See Section 3.3.3.

"(ix) Issuance of Forms I-20A or I-20M to students without receipt of proof that the students have met scholastic, language, or financial requirements." See Section 3.4.1.

"(x) Issuance of Forms I-20A or I-20M to aliens who will not be enrolled in or carry full courses of study as defined in 8 CFR 214.2(f)(6) or 214.2(m)(9)." This refers to the intent of the school issuing the Forms I-20A-B or I-20M-N. The school that issues those forms must do so with the understanding that the student is admitted for the purpose of carrying a full program of study and not for a part-time or casual program. A student is not required to intend to be a degree or certificate candidate as long as the student pursues a full course of study and has a specific educational objective. [1985 OI 8 CFR 214.2(f)(15)—This paragraph was omitted from the 1987 revision of the OIs, but it is assumed the policy is still in effect.] If the student subsequently fails to carry a full program of study, only the student is subject to punitive action. The school cannot be held responsible for the failure of the student to comply with the regulations. The school must report this fact to INS only when next required to respond to a periodic computer-generated list from INS or when requested to do so by an INS officer.

"(xi) Failure to operate as a bona fide institution of learning."

"(xii) Failure to employ qualified professional personnel." Presumably this refers principally to teachers who teach the students, but it could also be applied to DSOs who demonstrate that they are not qualified for their positions by not complying with the immigration regulations.

"(xiii) Failure to limit its advertising in the manner prescribed in 8 CFR 214.3(j)." This paragraph limits a school in its advertising and publicity with regard to its approval to accept nonimmigrant students to a statement that reads, "This school is authorized under Federal law to enroll nonimmigrant alien students." The limitation is designed to prevent schools from implying any INS endorsement of or recommendation about the school by virtue of its approval to enroll F-1 or M-1 students.

"(xiv) Failure to maintain proper facilities for instruction." This refers to the physical plant of the school, its library and laboratory resources, and any other facilities required for proper instruction conducted by the school. It is unlikely that INS would attempt or be able to determine what constitutes or does not constitute proper facilities, except in the most extreme cases.

"(xv) Failure to maintain accreditation or licensing necessary to qualify graduates as represented in the petition." Loss of accreditation or licensing in itself would not necessarily constitute a ground for withdrawal. It would be a ground for withdrawal, however, if the loss of accreditation or licensing negatively affected the school's ability to qualify graduates in the manner that was represented in the initial petition for school approval or any subsequent review of that approval, or if the school could no longer meet the requirements of 8 CFR 214.3(b).

"(xvi) Failure to maintain the physical plant, curriculum, and teaching staff in the manner represented in the petition for school approval." A school cannot build itself up in order to obtain school approval and then let itself atrophy after obtaining that approval. If it does not maintain the physical plant, curriculum, and teaching staff as represented in the petition, its approval can be withdrawn on notice.

"(xvii) Failure to comply with the procedures for issuance of Forms I-20A or I-20M as set forth in 8 CFR 214.3(k)." See Section 3.4.1. This provision appears to be only an expansion of (ix) above.

3.6.1.2 Procedures for withdrawal on notice

If a district director determines that a school is no longer entitled to school approval to enroll nonimmigrant students for one or more of the reasons enumerated above, INS will send a warning letter to the school. The warning letter must detail the dereliction(s) and advise the school that repetition of the offense(s) may lead to proceedings to withdraw the approval. The letter may ask for an explanation of the cause(s) of the offense(s) and an indication of corrective action taken or to be taken. The warning letter must also be accompanied by Form I-17 and, if applicable, Form I-17B, to be submitted as a request for continuation of its approval. [OI 8 CFR 214.4(c)]

If the school does not rectify its dereliction and the grounds for withdrawal continue to exist, INS will serve notice on the school of its intention to withdraw approval. The notice states the grounds on which INS intends to withdraw approval, setting out in reasonable detail the incidents upon which the finding of noncompliance is based. The notice also informs the school that it may submit within 30 days written representations supported by evidence setting forth reasons why the approval should not be withdrawn, and that it may request a hearing before a special inquiry officer. If the school admits the allegations or fails to respond within 30 days, school approval is withdrawn by the district director and there is no appeal from that decision. [8 CFR 214.4]

If the school contests the allegations and requests a hearing, that hearing is conducted before an immigration judge. INS is represented at the hearing by a trial attorney. The school may be represented by counsel at its own expense. The school has the opportunity to examine and object to evidence introduced against it, to present evidence in its own behalf, and to cross-examine witnesses. The immigration judge makes a decision either to withdraw the school's approval or to terminate the proceeding and allow the school approval to stand. That decision is final unless it is certified by the immigration judge to the regional commissioner for review or is appealed to the regional commissioner by either the school or the government trial attorney. [8 CFR 214.4(i)]

3.6.1.3 Reapplication after withdrawal on notice

The regulations declare: "If a school's approval is withdrawn on notice ... the school is not eligible to file another petition for school approval until at least 1 year after the effective date of the withdrawal." [8 CFR 214.4(a)(1)]

3.6.2 Automatic withdrawal of school approval

A school's approval to enroll nonimmigrant F-1 and/or M-1 students will be automatically withdrawn without a hearing if the school (1) terminates its operations [8 CFR 214.4(a)(2)]; (2) changes ownership (unless it files a new petition for school approval within 60 days of the change of ownership) [8 CFR 214.4(c)]; or (3) fails to respond to a notice of intention to withdraw approval for cause [8 CFR 214.4(c)].

"Automatic withdrawal of a school's approval is without prejudice to consideration of a new petition for school approval." [8 CFR 214.4(a)(2)] This means that a school whose approval has been automatically withdrawn can reapply for approval without fear of being judged adversely because the earlier approval was withdrawn.

3.6.3 Status of student at school where approval is withdrawn

When school approval is withdrawn the district director must notify each F-1 and M-1 student in attendance that approval has been withdrawn, that the student is permitted to remain in the United States to pursue a full course of study at that school only until the end of the current term plus 30 days, and that the student must seek admission to another INS-approved school or depart from the United States upon expiration of the authorized stay. If the student, despite diligent efforts, is unable to gain admission before the end of the authorized stay, the district director may grant voluntary departure not to exceed 6 months to allow the student to continue efforts to gain admission to an approved school. [OI 8 CFR 214.4(f)]

3.7 THE INSTITUTION AS EMPLOYER OF F-1 AND/OR M-1 STUDENTS

The Immigration Reform and Control Act of 1986 (PL 99-603) and pertinent regulations (8 CFR 274a and following) require employers to determine and verify by inspection of documents the employment eligibility of all workers, including aliens in F-1 and M-1 status. Failure to do so in the manner specified, including the execution of Form I-9 (which must be retained for at least 3 years or at least 1 year after the person leaves the employment, whichever is earlier), may subject the employer to civil and/or criminal penalties. The situations in which F-1 and M-1 students may be employed are discussed in Sections 4.9, 5.7, and 13.10.

SECTION 4

F Status: Students

Richard B. Tudisco (updated by Amy Yenkin, November 1992)

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Forms and Documents Discussed in This Section

ETA-9034	Attestation by Employers for Off-Campus Work Authorization for F-1 Students
I-20A-B	Certificate of Eligibility for Nonimmigrant (F-1) Student Status—for Academic and Language Students

I-20 ID	Certificate of Eligibility for Nonimmigrant (F-1) Student Status—for Academic and Language Students (pages 3-4)
I-94	Arrival/Departure Record
I-102	Application by Nonimmigrant Alien for Replacement of Arrival Document
I-129	Petition for Nonimmigrant Worker
I-221	Order to Show Cause and Notice of Hearing
I-506	Application for Change of Nonimmigrant Status (superseded in January 1992 by Forms I-129 and I-539)
I-17	Petition for Approval for Attendance by Nonimmigrant Students
I-17A	Designated School Officials
I-17B	System Attachment
I-512	Authorization for Parole of an Alien into the United States
I-515	Notice to Student or Exchange Visitor
I-538	Application by Nonimmigrant Student for Extension of Stay, School Transfer, and Permission to Accept or Continue Employment or Practical Training (4 May 1989)
I-538	Certification by Designated School Official (8 July 1991)
I-539(old)	Application to Extend Time of Temporary Stay
I-539(new)	Application to Extend Status/Change Nonimmigrant Status
I-541	Untitled cover letter
I-542	Untitled cover letter
I-543	Untitled cover letter
I-688B	Employment Authorization Document
I-765	Application for Employment Authorization
I-797	Notice of Approval or Extension of a Nonimmigrant Visa Application
M-242	Student and Schools Regulations

4.1 DEFINITION OF F STATUS

An F-1 visa and F-1 student status may be granted to an alien "who is a bona fide student qualified to pursue a full course of study" at an academic or language institution authorized to admit foreign students. When applying for an F-1 visa, the individual must prove to a U.S. consular official that he or she wishes to enter the United States temporarily and solely for the purpose of study and that the applicant has a permanent residence in a foreign country that he or she has no intention of abandoning. [Act 101(a)(15)(F)]

4.2 RESPONSIBILITIES ASSUMED BY AN APPROVED SCHOOL

Before a school may enroll nonimmigrant F-1 students, it must secure approval from the Immigration and Naturalization Service. A petition for approval is filed on both Form I-17 (Petition for Approval of School for Attendance by Nonimmigrant Students) and Form I-17A (Designated School Officials), which was revised in 1983. The petition is filed with the district INS office having jurisdiction over the place in which the school or school system is located.

To obtain approval for attendance by nonimmigrant students, a school must submit, along with Forms I-17 and I-17A, evidence of its legitimacy as an educational institution. Furthermore, it must confirm that it has designated certain officials—called designated school officials (DSOs)—to sign forms I-20 School, I-20 ID, and I-538, and it must affirm its intention to abide by certain record-keeping and reporting requirements. If the petitioner is a school system, it must also submit Form I-17B (School System Attachment).

Detailed information about the responsibilities assumed by a school approved for attendance by nonimmigrant students is provided in Section 3.

4.3 ISSUANCE OF FORM I-20A-B TO F-1 STUDENTS

The Certificate of Eligibility for Nonimmigrant (F-1) Student Status for Academic and Language Students is commonly referred to as Form I-20; its formal designation is Form I-20A-B/I-20 ID (rev. 27 April 1988). For purposes of this chapter, the entire Form I-20A-B/I-20 ID will be referred to as Form I-20A-B. Page 1-2 of the Form I-20A-B/I-20 ID will be referred to as the Form I-20 School Copy, and p. 3–4 of the Form I-20A-B/I-20 ID will be referred to as the Form I-20 ID. This terminology is consistent with the INS usage promulgated in the October 1991 and July 1992 revisions of the F-1 Student regulations. Until this usage is universally adopted, the DSO should be alert to variations in describing the Form I-20A-B/I-20 ID and its component parts.

An approved school may issue a Form I-20A-B to a foreign applicant only after the following conditions have been met:

1. The prospective student [must make] a written application to the school.

2. The written application, the student's transcripts or other records of courses taken, proof of financial responsibility for the student, and other supporting documents

[must be] received, reviewed, and evaluated at the school's location in the United States.

3. The appropriate school authority [must determine] that the prospective student's qualifications meet all standards for admission.

4. The official responsible for admission at the school [must accept] the prospective student for enrollment for a full course of study. [8 CFR 214.3(k)]

The school issuing the Form I-20A-B is responsible for ensuring that the prospective student meets the four preceding requirements; determination of whether the prospective student meets all other conditions of nonimmigrant status falls to INS or the Department of State (see also Section 3.4).

4.3.1 General requirements

The DSO of a school approved for enrollment of F-1 students may issue Form I-20A-B to a prospective student only after determining that the prospective student has met all standards for admission and all requirements of 8 CFR 214.3(k), and that the school has accepted the student for enrollment in a full course of study. Requiring the payment of a fee for its issuance is not permitted and may subject the official to a federal criminal prosecution. The issuance of a conditional or provisional Form I-20A-B is not permitted because the regulations authorize issuance only after all admission standards have been met.

Form I-20A-B is to be issued only within the United States and may be signed only after it has been fully and accurately completed. In signing a Form I-20A-B, a DSO affirms "under penalty of perjury" that he or she or some other school official has examined the student's academic records and financial documentation and has determined that the student meets the school's admission standards (see also Section 3.4.1).

4.3.2 Academic requirements

The academic institution should satisfy itself that the applicant has successfully completed a course of study equivalent to that normally required of an applicant educated in the United States and seeking admission at the same level.

A prospective student who must travel to the United States for an admission interview or entrance examination has not met all the academic requirements and, consequently, is not entitled to Form I-20A-B. That student, like a student who wishes to travel to the United States for the purpose of selecting a school, should apply to a U.S. consular office for a B-2 "prospective student" visa (see also Sections 4.3.1 and 11.2.2.3). [OI 248.7(d)(2)(i) and (ii)]

4.3.3 Language proficiency

The applicant should be sufficiently proficient in English to pursue his or her course of studies on a full-time basis; if such proficiency is lacking, arrangements must be made to provide the student with instruction in English.

Academic institutions may require the foreign applicant to take a standardized English proficiency test and have the results sent to the institution for evaluation as a condition of admission. Such tests are administered at various centers in the United States and abroad. Proficiency in English need not be required if the institution in which the student will enroll conducts its courses in a language in which the student is proficient, or will enroll the student in a full course of English or a combination of English training and academic courses that will constitute a full course of study. [22 CFR 41.61(b)(1)(iii)] The level of proficiency required, therefore, will depend on the extent to which the institution can substitute for or supplement the academic program with special classes in English for non-native speakers.

4.3.4 Financial certification

The school is required to obtain certification that the applicant has financial resources adequate to provide for his or her expenses at the school without resorting to unauthorized employment. [8 CFR 214.3(k)(2) and 214.4(a)(1)(ix)] Funds may come from scholarships, fellowships, sponsoring agencies, the student's family, or any dependable source. The school should be satisfied that funds are guaranteed at least for the student's first year of study and that, barring unforeseen circumstances, adequate funding will be available from the same or equally dependable sources for subsequent years.

The school should make a reasonable estimate of all expenses—including tuition, fees, books, supplies, maintenance (lodging and food), health insurance, and miscellaneous expenditures (clothing, local travel, recreation, toiletries, telephone, etc.)—and review the estimate each year. Calculation of costs for tuition, fees, and health insurance will be relatively straightforward. Setting standardized living-expense budgets for foreign students may be more complex; DSOs may find helpful guidance by referring to their own institutional student financial aid budgets or the monthly maintenance rate (MMR) set for U.S. government scholarship programs, available from such administering organizations as the Institute of International Education. Some institutions recognize ranges for their foreign student living-expense budgets. For example, a range for a metropolitan-area school might have the low-end figure drawn from the Fulbright student rate, the high end coming from the Humphrey Fellowship rate, and the midrange, or standard, figure indexed to the school's own student financial aid budget.

If the student is depending on funds from a source outside the United States, the school is well advised to determine if restrictions exist on the transfer of dollars from the country holding the funds. If there are restrictions, the student should present evidence that they will not prevent the funds from being transferred. Alternatively, the school may wish to require an advance deposit of tuition and perhaps living expenses as well before issuing the Form I-20A-B. An advance deposit for tuition or living expenses is not considered a fee for issuing Form I-20A-B. The Higher Education Reauthorization Act of 1986 (PL 99-498) permits such advance-deposit requirements.

DSOs who build a grace period into the Form I-20A-B completion date (see Section 4.3.6) may wish to note this fact in the "Remarks" section (item 9) of the form. This will alert United States visa officers that funding for the grace period would be required only in exceptional circumstances.

Newly admitted applicants should be advised that they are likely to be required to present documentary evidence of financial support at the time they apply for a visa and again when they apply for entry into the United States.

4.3.5 Full course of study

In issuing Form I-20A-B to a foreign applicant, the authorized school official certifies that the applicant is admitted to the institution for the purpose of enrolling in a full course of study that will lead to the attainment of a specific educational or professional objective. The student need not intend, however, to complete the course of study as long as he or she has a specific educational objective, such as becoming a degree candidate after making up certain deficiencies. A school may issue a Form I-20A-B only to an applicant who is expected to be engaged in a full course of study, including postdoctoral study, as defined in Section 4.5.2.

4.3.6 Form I-20A-B completion date

In issuing Form I-20A-B to a foreign applicant, the DSO must specify an expected program completion date in item 5 of the form. INS guidelines for calculating that date direct the DSO to "make a reasonable estimate based on the time an average foreign student would need to complete a similar program in the same discipline." Service regulations further prescribe that a "grace period of no more than 1 year [less is permissible] may be added onto the DSO's estimate." [8 CFR 214.2(f)(7)(ii)] Academic programs with highly predictable lengths of study will be more compatible with these guidelines than those with extensive project or research components, such as doctoral degrees. DSOs may wish, in general, to project the expected completion date based on their institution's academic policies, recognizing that if additional time is required, a student who has been maintaining good standing will be eligible for program extension (see Section 4.7).

Short-term programs, such as 3- or 6-week ESL courses, warrant special attention. Students enrolled in short courses are likely to consider options for continuing their studies only after finishing their immediate academic objectives—and after the application window for program-extension (see Section 4.7) has closed. To preserve program extension options for these students, DSOs would be well advised to add a 60-day grace period to short-term program completion dates (see also Section 4.3.4).

4.4 OBTAINING A VISA AND ENTERING THE UNITED STATES

To enable an applicant to obtain an F-1 visa to enter the United States for the purpose of undertaking a full course of study, the DSO issues the student a properly executed Form I-20A-B. It is advisable to keep a photocopy or computer record of the Form I-20A-B for the school's file.

The applicant must sign the certification in item 11 on page 1 of the Form I-20A-B (rev. 27 April 1988), attesting that he or she understands and will abide by the various conditions stipulated by F-1 status. Although the institution may be satisfied that an applicant meets all the conditions specified for obtaining F-1 status, the U.S. consular official makes the ultimate decision as to whether the applicant will be granted an F-1 student visa (see Section 2.3.4).

4.4.1 Aliens subject to passport and visa requirements

4.4.1.1 Obtaining a visa

An alien who is required to have a valid passport and visa for entry to the United States (see Sections 2.2.4 and 2.3.2) should apply for an F-1 visa at a U.S. consulate or embassy; in Taiwan, application is made at the American Institute in Taiwan. A personal interview with the consular official may or may not be required. The applicant is required to present a valid passport and Form I-20A-B; he or she should also be prepared to present proof of English-language proficiency and verification of financial support (see Section 2.3.3) to establish that all the requirements for nonimmigrant student status are met. Furthermore, an applicant for an F-1 visa must be prepared to demonstrate that he or she has a residence in a foreign country that he or she has no intention of abandoning (see Section 2.3.4). A U.S. consular official may require an applicant for an F-1 visa to post a bond to ensure that the applicant will maintain his or her lawful nonimmigrant status and depart from the United States after completing his or her specific educational objective. [22 CFR 41.61(c)] Such departure bonds are extraordinarily unusual.

Except for unusual circumstances, a visa will be issued within a few hours or days of the submission of the application. The consular official may need more time, however, should the application be submitted outside the consular district serving the home residence of the applicant. This is true particularly when third countries are involved because information deemed relevant to the visa decision may not be immediately available. Where security checks (generally referred to as "name checks") are made, visa issuance may take up to 10 working days. As of September 1992, security checks are routinely made on applicants from Iran, Iraq, Libya, nationals of the Baltics (Estonia, Latvia, and Lithuania), former Eastern bloc countries, and the People's Republic of China. Prospective students from these countries applying for their initial student visa may experience delays, particularly if they are applying for a visa in a third country.

If the visa application is approved, a visa stamp is placed in the applicant's passport, noting the period of its validity, the number of entries allowed (see Section 2.3.1), and the name of the school whose Form I-20A-B the applicant used to obtain the visa. The Form I-20A-B is then returned to the applicant to use in applying for admission to the United States.

Extraordinary circumstances might prevent a person admitted to a school from getting a Form I-20A-B in time to apply for a visa and reach the school in a timely way. In such circumstances, the school may want to make use of international express mail or courier services. The "interested-party cables" the Visa Office formerly sent in these cases are no longer used, except possibly in cases involving countries where the courier services are not available. [*Foreign Affairs Manual*, vol. 9, Sec. 41.61, N11.2]

In the event that a Form I-20A-B is not received, but a consular officer is satisfied through documentary evidence that an alien has been granted admission, the alien may be granted a B-2 Prospective Student visa. [OI 8 CFR 248(d)(2)(iii)] Similarly, a student with a Form I-20A-B who intends to enter the United States more than 90 days before the reporting date noted on Form I-20A-B may be issued a B-2 Prospective Student visa rather than an F-1 visa (see Sections 4.12.1.1 and 11.2.2.3). [8 CFR 248(d)(1)]

4.4.1.2 Entering the United States; entry documents

When the applicant arrives at the U.S. port of entry, he or she presents a passport (or travel document), visa, evidence of financial support, and Form I-20A-B to the immigration official. Only versions of Form I-20A-B dated 27 April 1988 or thereafter are acceptable for initial entry. If the applicant has previously been in the United States in F-1 or M-1 status and has been issued Form I-20 ID or Form I-20 ID Copy (see note), he or she is expected to present that as well. On the initial entry in F-1 status, the immigration official must be satisfied that the applicant is destined to and intends to attend the school specified in the visa (see Section 4.4.2 for exceptions to the passport and visa requirements).

In cases of initial entry in F-1 status where a student does not intend to enroll at the school noted on the visa, the inspecting officer may, in the exercise of discretion, admit the student provided he or she presents a Form I-20A-B for the school he or she plans to attend, as well as documentary evidence of financial ability to attend that school. In addition, the student must establish either that failure to have the correct school noted on his or her visa resulted from circumstances beyond the student's control or that failure to be admitted would result in severe hardship to the student. If the student is not admitted to attend the preferred school but rather is admitted to attend the school noted in the visa by the consular officer, the student must attend that school for some period of time before seeking to transfer to the preferred school (see Sections 4.5.1 and 4.8). A student who attends a school other than the one authorized is out of status and must apply for reinstatement (see Sections 4.8 and 4.10). However, if a student who has been in student status in the United States has made a temporary visit out of the country and has transferred or intends to transfer between schools upon reentering the United States, the name of the new school does not need to be specified on the student's visa (see Section 4.11). [8 CFR 214.2(f)(4)(ii)]

Upon admitting the student to the United States, the immigration officer issues the student the departure portion of a Form I-94 (Arrival/Departure Record), showing the date and place of entry, the alien's status as an F-1 student, and a unique 11-digit admission number. The Form I-94 is issued to each entering nonimmigrant and, except in the cases noted below, records all nonimmigrant transactions with INS. If the alien is in F-1 or M-1 status, transactions taken by INS are recorded on Form I-20ID. Transactions affecting E, H, L, O, P, and Q nonimmigrants are recorded on Form I-797, the notice of approval or extension of a nonimmigrant visa application (see Section 2.4.1). The admission number is the basis for the INS arrival/departure database known as the Nonimmigrant Information System (NIIS).

Upon the student's initial entry to the United States on a student visa, the admitting immigration official retains the Form I-20 School Copy (p. 1-2) and returns to the student Form I-20 ID (p. 3-4 of Form I-20A-B), marked to show the date and place of admission and the admission number. All F-1 students' transactions with INS are noted on this form except for the adjudication of optional practical training and employment based on economic hardship, which results in issuance of an Employment Authorization Document. The admission number goes into the "student enhancement" program of the NIIS. By means of this program, INS keeps track

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Note:
Between 1984 and 30 June 1988, the "Form I-20 ID Copy" was a yellow card. INS discontinued the yellow card on 30 June 1988. A new version of the Form I-20A-B, dated 27 April 1988 and designated Form I-20A-B/I-20 ID, became available later the same year. The April 1988 Form I-20A-B has the designation "I-20 ID (Student) Copy" printed sideways in the left margin of page 3. INS instructed students with the old, yellow Form I-20 ID Copy to staple the card to the new version of the Form I-20 ID. F-1 students are asked to retain all Forms I-20 ID they may acquire.

not just of the arrivals and departures of F-1 students but also of their fields of study, degree objectives, transfers of schools, permission to work, practical training, and several other matters. The Form I-20 ID is issued only to students and not to dependents holding F-2 status.

The admission number is intended to be an individual alien's lifelong identifying number for study in F-1 or M-1 status. Students in F-1 status are instructed to keep all Forms I-20 ID in their possession at all times and not to surrender them upon leaving the United States. The Form I-94, by contrast, is to be surrendered upon departure, except in the case of visits of 30 days or less to Canada, Mexico, or adjacent islands other than Cuba. When an F-1 student who has surrendered Form I-94 upon leaving the United States subsequently reenters the United States, he or she is issued a new Form I-94, but not a new Form I-20 ID. The preprinted admission number on the new Form I-94 is stricken and replaced with the student's Form I-20 ID admission number. INS requires anyone who receives a Form I-20 ID to retain it as long as there is any possibility that he or she will seek to enter the United States in F-1 or M-1 status.

An alien seeking admission to the United States in F-1 or M-1 status who has previously been in this country as an F-1 or M-1 student, but who does not know his or her admission number, can experience delays at the port of entry while INS searches its records for the number. Additional information about the uses of Form I-20 ID appears throughout this section of the *Manual*. The regulations state that, "should the student lose his or her current [Form] I-20 ID, a replacement copy bearing the same information as the lost copy, including any endorsements for employment and notations, may be issued by the DSO." [8 CFR 214.2(f)(2)]

4.4.1.3 Admission for "duration of status"

The F-1 student will be admitted to the United States for "duration of status," noted as "D/S" on both Form I-94 and Form I-20 ID. Duration of status means the period during which the student "is pursuing a full course of study at an educational institution approved by the Service for attendance by foreign students, or engaging in authorized practical training following completion of studies, plus 60 days to prepare for departure from the United States. The student is considered to be maintaining status if he or she is making normal progress toward completing a [full] course of study." [8 CFR 214.2(f)(5)(i)]

During the 60-day period, students may apply to move to another educational level (see Section 4.7.3), transfer schools (see Section 4.8), or change to another nonimmigrant status (see Section 2.7). No employment is permitted during the 60-day period if the student intends to leave the United States rather than continue in another educational program. A student applying for optional practical training following completion of a course of study must do so during this 60-day period following completion of studies (see Section 4.9.3.2.1).

In addition to enrolling full time during the academic year, F-1 students must keep their passports valid (unless they are exempt from the passport requirement—see Section 2.2.4).

Canadians who enter the United States from outside the Western Hemisphere must have passports; they are not required to have visas. [8 CFR 212.1(a)]

4.4.2 Aliens not subject to passport and visa requirements

Passport and visa requirements for entry to the United States do not pertain to certain aliens. The most common exceptions to the passport and visa requirements are Canadian citizens or landed immigrants of Canada having a common nationality with Canadians who are entering the United States from the Western Hemisphere [8 CFR 212.1(a)], and citizens of the Republic of the Marshall Islands and the Federated States of Micronesia who have proceeded in direct and continuous transit from their country of citizenship to the United States (see Section 2.2.4). [8 CFR 212.1(d)] An alien in one of these categories applies directly to an immigration inspector at a port of entry for admission as an F-1 student. The procedure is the same as that followed by aliens subject to passport and visa requirements, except that the applicant need not present either a passport or a visa.

4.4.3 Temporary admission with Form I-515

If a prospective F-1 student appears at a port of entry in good faith without a properly completed Form I-20A-B or a properly endorsed p. 4 of Form I-20 ID, but otherwise appears eligible for admission as an F-1 student, the INS inspector may admit him or her for a period of 30 days and issue Form I-515 (Notice to Student or Exchange Visitor). That form instructs the alien to obtain a properly completed Form I-20A-B from the school the student attends and send it, along with any previous Forms I-20 ID (if he or she has one) and Form I-94 for the student and any accompanying dependents, to the INS office having jurisdiction over the school. The district office will then grant the alien and any F-2 dependents permission to stay for duration of status, noting the extension on the student's Form I-20 ID and on the Forms I-94 of the student and dependents.

An F-1 student who responds in a timely manner to the requirements specified by Form I-515 is considered to be maintaining status while the formal INS adjudication is pending. For purposes of verification of employment eligibility (see Section 4.9.5), such student may be characterized as having permission to stay for the period specified by the Form I-20A-B used in response to the Form I-515. [INS-NAFSA meeting, 13 November 1991]

If the immigration inspector at the port of entry is unable to ascertain that the applicant is eligible for admission as an F-1 student, the inspector may parole the alien into the United States for "deferred inspection." The alien is required to appear in person at the district INS office having jurisdiction over the school the student plans to attend to complete inspection and admission to the United States (see Section 10.2.3).

4.5 MAINTENANCE OF STATUS

4.5.1 General requirements

Once an alien is admitted to the United States in F-1 status, he or she must meet certain obligations in order to maintain status. The student must

1. have a passport that is kept valid at all times, unless exempt from the passport requirement. (The requirement that passports be kept valid for a minimum period of 6 months into the future was dropped in late 1987 [*Federal Register*, 30 November 1987, pp. 45445-46]) (see Section 2.2.4);
2. attend the school he or she was authorized to attend (see Section 4.4.1);
3. continue to carry a full course of study (see Section 4.5.2);
4. follow certain procedures if the student must remain in the United States longer than the length of time estimated for completion of his or her educational program, as stated on the initial I-20A-B issued to begin the program of study (see Section 4.7);
5. follow certain procedures to continue from one educational level to another (e.g., from the bachelor's to the master's level) at the same school (see Section 4.7.3);
6. follow certain procedures to transfer to a school other than the one originally authorized (see Section 4.8);
7. limit employment, both on campus and off, to a total of 20 hours per week while school is in session (see Sections 4.9.1 and 4.9.2);
8. refrain from off-campus employment without authorization (see Section 4.9.2); and
9. report a change of residence to INS within 10 days of the change (see Section 2.5.2).

The student is admitted to the United States for "duration of status," defined in the regulations as the period during which the student "is pursuing a full course of study at an educational institution approved by INS for attendance by foreign students, or engaging in authorized practical training following completion of studies, plus 60 days to prepare for departure from the United States. The student is considered to be maintaining status if he or she is making normal progress toward completing a [full] course of study." [8 CFR 214.2(f)(5)(i)]

See Section 3.5.3.1 for the DSO's responsibilities regarding students who may not be carrying a full course of studies. School officials are not required to report other violations of status to INS.

4.5.2 Full course of study

The regulations define a full course of study as follows:

(A) Postgraduate study or postdoctoral study at a college or university, or undergraduate or postgraduate study at a conservatory or religious seminary, certified by a DSO as a full course of study;

(B) Undergraduate study at a college or university, certified by a school official to consist of at least 12 semester or quarter hours of instruction per academic term in those institutions using standard semester, trimester, or quarter hour systems, where all undergraduate students who are enrolled for a minimum of 12 semester or quarter hours are charged full-time tuition or are considered full-time for other administrative purposes, or its equivalent (as determined by the district director in the school approval process), except when the student needs a lesser course load to complete the course of study during the current term;

(C) Study in a postsecondary language, liberal arts, fine arts, or other nonvocational program at a school which confers upon its graduates recognized associate or other degrees or has established that its credits have been and are accepted unconditionally by at least three institutions of higher learning within 8 CFR 214.3(c) (1) or (2), and which has been certified by a designated school official to consist of at least 12 clock hours of instruction a week, or its equivalent as determined by the district director in the school approval process;

(D) Study in any other language, liberal arts, fine arts, or other nonvocational training program, certified by a designated school official to consist of at least 18 clock hours of attendance a week if the dominant part of the course of study consists of classroom instruction, or to consist of at least 22 clock hours a week if the dominant part of the course of study consists of laboratory work; or

(E) Study in a primary school or academic high school curriculum certified by a designated school official to consist of class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress toward graduation. [8 CFR 214.2(f)(6)(i)]

4.5.2.1 Postdoctoral students

Students who have completed requirements for a doctorate may be offered the opportunity for advanced study at the postdoctoral level. Under certain conditions discussed below, such students are eligible to apply for F-1 visas to come to the United States, to continue in F-1 status for the new educational program at the school they were last authorized to attend, to effect a transfer in F-1 status to begin a new educational program, or to

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change nonimmigrant classification to F-1 in order to undertake postdoctoral study. [8 CFR 214.2(f)(6)(i)(a)]

Conditions under which nonimmigrant postdoctoral appointees are eligible for F-1 classification were set forth in a 12 October 1988 INS cable to its field offices. The cable said "on-campus employment pursuant to the terms of a ... postdoctoral appointment ... must, normally, be performed on the premises of the school and is limited to no more than 20 hours a week when school is in session." The cable went on: "Only those postdoctoral fellows pursuing an educational objective that requires a combination of course work and no more than 20 hours of research per week while school is in session are certifiable as F-1 students." A 7 November 1988 INS cable exempted postdoctoral students in F-1 status prior to 12 October 1988 from the 20-hour-per-week work limitation and provided assurance that neither the school nor such F-1 postdoctoral fellows would be subject to "sanctions or penalties. Nor will it affect consideration of a future request by [such a] student for adjustment."

The school accepting the student for full-time postdoctoral study issues Form I-20A-B, checking item 4h, "Other," and entering the word "postdoctoral" in that item. Although no time limit for postdoctoral study is set by regulation, INS has directed its officers to look into cases where it appears that the student may engage in postdoctoral study for more than 3 years.

4.5.2.2 Deviations from the full-course-of-study requirement

In the situations described below, F-1 students are considered to be maintaining status even if they are not registered for a full course of study.

1. **Vacation.** "An F-1 student at an academic institution is considered to be in status during the annual (or summer) vacation if the student is eligible and intends to register for the next term. A student attending a school on a quarter or trimester calendar who takes only one vacation a year during any one of the quarters or trimesters instead of during the summer is considered to be in status during that vacation, if the student has completed the equivalent of an academic year prior to taking the vacation." [8 CFR 214.2(f)(5)(iii)]

2. **Medical problem.** "A student who is compelled by illness or other medical conditions to interrupt or reduce a full course of study is considered to be in status during the illness or other medical condition. The student must resume a full course of study upon recovery." [8 CFR 214.2(f)(5)(iv)] Because medical problems may not be noted on a school's enrollment records, the DSO should secure from the student a statement from the health-care practitioner requiring or recommending the interruption or reduction in studies. In those cases in which either the health-care practitioner is not known to the DSO or a second opinion appears warranted—and the student wishes to be certified as maintaining status for immigration purposes—the DSO may wish to seek a diagnosis and prognosis from the institution's health service.

DSOs would be well advised to develop an institutional policy regarding medical leaves of absence for students wishing to maintain F-1 status, particularly with regard to students who, upon entering the United States on the institution's Form I-20A-B, immediately request such a leave. There is no explicit INS guidance on the permissible length of a medical leave; however, an individual whose ongoing or open-ended medical condition will keep him or her out of school indefinitely might appropriately be advised to apply to INS for a nonimmigrant status to remain in the United States for the purpose of receiving medical attention rather than that of pursuing full-time study.

3. **Teaching or research assistantship.** To clarify its regulatory statement that "on-campus employment pursuant to the terms of a scholarship, fellowship, or assistantship is deemed to be part of the academic program of a student otherwise taking a full course of study" [8 CFR 214.2(f)(6)(iii)], INS has declared that "students who are assigned teaching or research responsibilities pursuant to the terms of a scholarship or fellowship may carry a reduced course load. For example, a student enrolled in a master's program [may be] normally required to carry 9 semester hours [to be classified as full time]. However, it is a common practice among educational institutions to restrict students awarded teaching or research assistantships to 6 semester hours." [Supplementary Information to 8 CFR 214, *Federal Register*, 29 October 1991, pp. 55609-10]

4. **Postdoctoral students or fellows.** Postdoctoral students or fellows usually are not enrolled for student registration credit and therefore may not appear on course-enrollment lists. They are considered to be pursuing full courses of study, however, if they are carrying on the research and studies for which they were issued Form I-20A-B. [8 CFR 214.2(f)(6)(i)(A)] Postdoctoral students are permitted to carry on a combination of coursework and no more than 20 hours of research (or employment) per week while school is in session (see Section 4.5.2.1).

5. **Graduate students who have completed formal course work.** Graduate students who are preparing for comprehensive examinations or who are engaged in research on theses or dissertations may be registered to maintain matriculation only or enrolled for a number of credit hours less than that routinely defined as full time by the school, depending on the school's academic policies. A school official would have to make an individual determination (generally by consulting the student's academic adviser) as to whether such a graduate student is or is not pursuing a full course of study as defined in the regulations. [8 CFR 214.2(f)(6)(i)(A)]

6. **Valid academic reasons for enrolling less than full time.** An F-1 student may be considered to be pursuing a full course of study even though enrolled for less than a full course of study when authorized to do so by a DSO for the following reasons: "initial difficulties with the English language or reading requirements, unfamiliarity with American teaching methods, or

improper course level placement." [8 CFR 214.2(f)(6)(iii)]

A student on the verge of failure may very well have been placed at an improper course level and, therefore, may be advised by a DSO to enroll for less than a full course of study without violating his or her status. A student who has generally maintained or exceeded the minimum number of credit hours over a period of time but who does not complete the minimum required number of credit hours in a particular term because of dropping a course due to imminent failure in the course, might be held to be carrying a full course of study during that term. In the case of *Mashi v. INS*, 585 F.2d 1309 (5th Cir. 1978), a federal circuit court held that one undergraduate student would not be deported for failure to maintain student status despite the student's failure to complete 12 credit hours in a given term. Since INS interprets this case as having very limited applicability because of its special circumstances, students and school officials should be cautious in attempting to apply its principle too broadly.

7. **Undergraduates completing programs during the current term.** An undergraduate student who needs fewer than 12 hours to complete his or her program of study is considered to be pursuing a full course of study if the student enrolls in the number of credit hours necessary to complete the program in the final term. [8 CFR 214.2(f)(6)(i)(B)] (See paragraph (5) above and Section 4.5.2, paragraph (A) regarding graduate students.)

8. **Practical training.** A student on authorized practical training following completion of studies usually is not formally enrolled but is considered by INS to be pursuing a full course of study at the school where the studies were undertaken and whose DSO authorized or recommended the practical training (see Section 4.9.3.2). [8 CFR 214.2(f)(5)(i)] A student who is complying with the terms of practical training following completion of studies is not prohibited from enrolling in classes.

A student engaged in full-time curricular practical training may or may not be formally enrolled. Some institutions will require students engaged in cooperative education internships to register for the term; others may simply demand evidence that the curricular requirement has been fulfilled. A student engaged in part-time curricular or optional practical training would be required to enroll concurrently or be otherwise certifiable as exempt from the full-time course of study requirement (e.g., in the last term for an undergraduate degree).

9. **A student at a school where school approval is withdrawn.** Such students are permitted to complete the current term and, therefore, are considered to be pursuing a full course of study during that term (see Section 3.6.3).

Schools are advised to create an internal procedure by which situations 2 through 7 can be certified by a student's department head, academic adviser, physician, registrar, or other appropriate person.

4.5.2.3 Concurrent enrollment

An F-1 student at a community college, college, or university may enroll concurrently in two INS-approved schools provided that:

1. through the combined enrollment, the student is enrolled in the equivalent of a full course of study;
2. the student is enrolled in a degree program at one of the two schools;
3. attendance at the other school is with permission of a designated official at the school where the student is enrolled in a degree program;
4. the coursework at the other school is not avocational and will be accepted for fulfilling degree requirements;
5. a designated official at the school where the student is enrolled in a degree program has evidence of the student's enrollment in the equivalent of a full course of study;
6. the official who issues Form I-20A-B is in all respects responsible for all regulatory record-keeping and reporting requirements relating to the student; and
7. the name and the address of the other school where the student is enrolled are clearly stated in the remarks (item 9) on page 1 of the Form I-20A-B if a new Form I-20A-B is issued. A new Form I-20A-B is not needed for a student at the time he or she enters into concurrent enrollment. The next time a Form I-20A-B is needed for the student, it is the responsibility of the school at which the student is enrolled in a degree program to complete the form as provided in item 7 above.

Rarely will DSOs need to invoke INS-related procedures in addressing concurrent enrollment. Students enrolled for a full-time program at an INS-approved school do not require permission to take additional courses at another INS-approved school. Similarly, students accepted into accredited joint interinstitutional programs are so described from the outset by their initial Forms I-20A-B. Concurrent enrollment procedures address the special need of a student who wishes to take a particular course (or courses) at another INS-approved school and would be less than full time at his or her home school unless the course(s) were counted toward the student's overall course load.

INS regulations do not explicitly address concurrent enrollment and have not done so since the pertinent section of the 1985 Operations Instructions [OI 8 CFR 214.2(f)(14)] was excluded from the 1987 OI revision. Although INS has not addressed the matter of concurrent enrollment recently, it is clear that INS considers its tolerance of this option as an extraordinary effort to accommodate the special needs of some colleges and universities. DSOs responsible for students engaged in concurrent enrollment are well advised to document rigorously the academic rationale for pursuing this option.

4.5.3 Disclosure of information; criminal activity

F-1 students, like all other nonimmigrants, are required to disclose fully and truthfully all information requested by INS, regardless of whether the information requested was material.

According to the regulations, "a condition of a nonimmigrant's admission and continued stay in the United States is the full and truthful disclosure of all information requested by INS. Willful failure by a nonimmigrant to provide full and truthful information requested by INS (regardless of whether the information requested was material) constitutes a failure to maintain nonimmigrant status under section 241(a)(1)(c)(i) of the Act." [8 CFR 214.1(f)] Disclosure of student information by DSOs, and important implications under the Family Educational Rights and Privacy Act (FERPA), are discussed in detail in Section 3.5.2 of this *Manual*.

Students are also required, as a condition of their admission, to obey all federal and state laws that prohibit the commission of crimes of violence. "A nonimmigrant's conviction in a jurisdiction in the United States for a crime of violence for which a sentence of more than 1 year imprisonment may be imposed (regardless of whether such sentence is in fact imposed) constitutes a failure to maintain status under section 241(a)(1)(c)(i) of the Act." [8 CFR 214.1(g)]

4.6 PROCESSING F-1 STUDENT APPLICATIONS FOR IMMIGRATION BENEFITS

Students in F-1 status may be eligible for certain benefits pursuant to the immigration regulations. These benefits include on-campus employment, program extension, continuation in a new educational level at the same school, transfer of schools, and permission to engage in off-campus employment. The regulations published on 29 October 1991 (retroactively effective to 1 October 1991 for all benefits except on-campus work and practical training) and a 20 July 1992 interim regulation made substantial changes in the procedures to apply for and receive many of these benefits. [INS headquarters cable, 29 October 1991]

Some benefits (program extension, off-campus employment, curricular practical training, and optional practical training) require application on Form I-538, rev. 8 July 1991 (Certification by Designated School Official).

In the cases of program extension, off-campus employment under the pilot program, and curricular practical training, the Form I-538 is completed by the student, certified by the DSO, and forwarded to the INS Data Processing Center with any additional required documents to report that the student has met the specific conditions for program extension or employment authorization. Approval (certification) of the benefit is also noted on the student's Form I-20 ID by the DSO.

In the case of optional practical training either before or following completion of studies, the procedure begins similarly. The Form I-538 is completed by the student, certified by the DSO, and forwarded to the INS Data Processing Center to report that the student has met the specific conditions for recommendation for optional practical training. The DSO also notes the recommendation on the student's Form I-20 ID. To complete the process of obtaining employment authorization for optional practical training either before or following completion of studies, the student uses the endorsed Form I-20 ID as a supporting document to Form I-765 (Application for Employment Authorization), which is filed with the INS office having jurisdiction over the student's place of residence. Submission of Form I-538 is not required.

In the case of off-campus employment based on severe economic hardship, the Form I-538 is completed by the student and certified by the DSO to indicate that the student has met the necessary conditions to apply for this benefit. The student submits the Form I-538, his or her Form I-20 ID, and Form I-765 with fee to the INS office having jurisdiction over the student's place of residence.

The action taken by INS in reviewing applications for optional practical training and employment based on severe economic hardship is known as an *adjudication decision*. Approval of these applications results in issuance of an Employment Authorization Document (EAD), Form I-688B. If the application is denied, the denial is noted by an INS officer on the student's Form I-20 ID, which is returned to the student with Form I-541 notifying the student of the decision. The INS district director may, at his or her discretion and upon a DSO's request, inform the DSO of the decision by means of a copy of Form I-542 (for approval) or Form I-541 (for denial).

Adjudications are made in the name of the INS district director. Some applications may be "remoted" by the district director to a border or airport post, in which case the adjudication is made by a border or airport officer in the name of the district director.

An adjudication decision on a Form I-765 application may not be appealed. [8 CFR 214.2 (f)(9)(ii)(F)(2), 8 CFR 214.2(f)(12)] See Section 13.3.2 for procedural recourse in the face of a denial.

On-campus employment, within certain limitations, is a benefit inherent to F-1 classification. No application or request is required from students who are in lawful F-1 status and wish to work on campus.

Other benefits (continuation in a new educational level at the same school and transfer to another school) are obtained when the student meets specific conditions and makes a request of a DSO in accordance with certain procedures. The certification of the benefit is noted on Form I-20 ID by the DSO, who is required to notify the INS Data Processing Center and, in the case of a transfer, the former school. This process is known as *notification*.

The following sections (4.7, 4.8, and 4.9) discuss benefits available to F-1 students and the procedures to be followed in obtaining them.

4.7 PROGRAM EXTENSION

4.7.1 Eligibility

An F-1 student is admitted to the United States for "duration of status," that is, to complete an educational program. However, if a student must remain in an educational program beyond the date originally estimated for completion of the program (as stated by item 5 on the initial Form I-20A-B issued to begin the program) the student must comply with INS procedures for program extension. Application must be made to the DSO "in a 30-day period before the completion date [item 5] on Form I-20A-B." [8 CFR 214.2(f)(7)(i)] An F-1 student is eligible for program extension if he or she (1) has "continually maintained status" and (2) delay in completion is "caused by compelling academic or medical reasons, such as changes of major or research topics, unexpected research problems, or documented illnesses." The regulations go on to state that "delays caused by academic probation or suspension are not acceptable reasons for program extension." [8 CFR 214.2(f)(7)(iii)] A student who fails to complete his or her program within the time prescribed in item 5 of his or her Form I-20A-B and cannot meet the eligibility criteria for program extension is considered out of status and must apply for reinstatement to student status (see Section 4.10). [8 CFR 214.2(f)(7)(iv)] These provisions for program extension are effective 1 October 1991 and applicable to all F-1 students, irrespective of the date they were admitted to the United States or began their programs. [Supplementary Information to 8 CFR Part 214, *Federal Register*, 29 October 1991, p. 55609]

It is clear that INS would consider either suspension or a break in a student's F-1 status, as determined by the DSO, as disqualifying for purposes of program extension. The fact that a student has been placed on academic probation during his or her program is less clearly determinative and may require the DSO to assess the student's overall progress, performance, and seriousness of purpose before concluding ineligibility.

The program-extension process does not require an INS adjudication or a formal authorization of extension of stay. It is a process whereby the DSO verifies eligibility criteria and notifies the INS Data Processing Center of a student's new expected completion date. This information is used to update INS's student database.

A student who will be abroad during the prescribed 30-day application period for program extension may accomplish the procedure alternatively through his or her reentry to the United States. Such a student should obtain a Form I-20A-B executed as in Section 4.7.2 immediately below, with two modifications: block 3(b) ("Continued attendance at this school") should be checked, and in the Remarks section (item 9), "Pursuant to 8 CFR 214.2(f)(7)(iii), program extension is granted" should be entered. [INS-NAFSA meeting, 13 November 1991]

4.7.2 Procedures

To effect a program extension, the student must:

1. obtain a Form I-20A-B from the authorized school of attendance bearing the student's Form I-20 ID (Admission) number. It is suggested that the Form I-20A-B be executed as follows: check block 3(e) ("Other") and specify "for program extension," and update item 5 to reflect the new expected completion date (which may include a grace period of up to 1 additional year);
2. complete item 11 of the Form I-20A-B;
3. complete Section A, questions 1 through 6, of Form I-538; and
4. submit the completed Forms I-20A-B and I-538 to the DSO within the 30-day period before the expected completion date noted on the initial Form I-20A-B for the student's current program or level.

The DSO at the school the student is authorized to attend must:

1. attach p. 3-4 of the new Form I-20A-B to the student's old Form I-20 ID; and
2. certify Section B of Form I-538; on the reverse side of the form, note the following, "Pursuant to 8 CFR 214.2(f)(7)(iii), program extension is granted." [INS-NAFSA meeting, 13 November 1991]
3. attach the Form I-538 to page 1-2 of the student's new Form I-20A-B, and send both to the INS Data Processing Center no later than 30 days after approving the program extension. No confirming letter need be attached to the INS Data Processing Center mailing. No action is required for spouses or children in F-2 status.

The regulations governing program extension explicitly require documentation only in the case of illness. In extenuating cases not related to illness, however, many DSOs will want the student's academic department or academic adviser to provide a written certification (1) attesting to the valid academic reasons why the student's program could not be completed within the allotted time, and (2) specifying an expected date of completion of the student's program. The DSO will also want to note that INS's list of academic reasons for delay is exemplary and does not purport to be exhaustive.

The program extension notification process is a marked improvement over the previous procedures. The 1987 version of the student regulations required formal application to INS if a student remained in F-1 status for 8 consecutive years or, based on a formula that permitted a 6-18 month grace period, exceeded the expected date of completion noted on the student's initial Form I-20A-B. INS authorization of extension of stay was reflected by the following Form I-20 ID notations: (1) for 8-year extension, "8 Year Extension of Stay Approved [date of action and officer's signature]", and (2) for extended time within a program or level, "Program Extension of Stay Approved [date of action and officer's signature]." DSOs will see some variations of these prescribed formats.

Special transition rules apply to students who were in status within their grace periods on 1 October 1991. INS requires no specific transition-related action on the part of either these students or their DSOs. These students are eligible for new Forms I-20A-B with completion dates reflecting their 18-month grace period. Their newly specified completion dates are used to determine whether and when they must apply for program extension according to the procedures described above. Although INS does not require DSOs to issue new Forms I-20A-B to these students, most DSOs will want to use the opportunity to specify for their students the termination date of their grace periods. Naturally, a student within a grace period wishing to travel abroad and reenter will require a new Form I-20A-B for that purpose (see Section 4.11).

4.7.3 Continuing in a different educational level at the same school

Although this is not, strictly speaking, a program extension or extension of stay, the student must comply with certain procedures to remain in status when continuing from one educational level to another at the school the student was last authorized to attend. [8 CFR 214.2(f)(5)(ii)] The transition process is accomplished in the following manner. The student must:

1. obtain Form I-20A-B for the new educational program;
2. enroll in the new educational program in the first term following completion of the previous educational program or vacation; and
3. complete item 11 of Form I-20A-B and submit it to a DSO no later than 15 days after beginning classes.

The DSO must:

1. check block 3(e) ("Other") of the Form I-20A-B and note that "student is moving from ______ program to ______ program at the same institution" [INS letter to NAFSA, 22 May 1987];
2. submit the Form I-20A-B to the INS Data Processing Center within 30 days of receipt from the student in order to notify INS of the change of program; and
3. return to the student the Form I-20 ID.

The regulations do not require an INS adjudication or a formal authorization to change educational levels. Regulatory language prescribes that "transition to [a] new educational level is accomplished according to transfer procedures." [8 CFR 214.2(f)(5)(ii)] Thus, it follows that—as in the INS transfer procedure—completion of this procedure within 45 days of enrollment, irrespective of when within this period a student initiates the procedure, satisfies the intent of the regulations (see Section 4.8.2).

A student also may accomplish the procedure for continuation in a new program at the same school through his or her reentry to the United States from abroad. Such a student should obtain a Form I-20A-B executed for the new program. The DSO should check blocks 3(b) ("Continued attendance at this school") and 3(e) ("Other"), adding the above-mentioned explanation: "student moving from ______ program to ______ program at the same institution." A student following this alternative is presumed to be bound by the same application deadlines as if applying in the United States.

4.8 TRANSFER OF SCHOOLS

4.8.1 Eligibility

An F-1 student "who is maintaining status may transfer to another Service-approved school by following the notification procedure ... An F-1 student who was not pursuing a full course of study at the school he or she was last authorized to attend is ineligible for school transfer and must apply for reinstatement." [8 CFR 214.2(f)(8)(i)] There is no specified minimum period of time the student must be enrolled at the school he or she was last authorized to attend, although it is clear that the student must have attended that school for at least some period of time. The DSO at the new school should follow the transfer procedures unless he or she knows the student is not eligible to effect a transfer. The regulations do not require an INS adjudication or a formal authorization to transfer.

The matter of establishing attendance at the previous school may be problematic when a student making a first-time entry wishes to attend an institution other than the one that issued the Form I-20A-B the student used to enter the United States. This issue was a subject of the 28–29 September 1988 quarterly meeting between NAFSA and INS, reported in the November 1988 *Government Affairs Bulletin* (*GAB*). The *GAB* report noted:

> In order for a student to use [the school transfer procedure], the institution which has issued the original I-20 must confirm full-time attendance. Under paragraph 4 of the school transfer procedure in the December 1987 OIs, "verification of a student's attendance in class is synonymous with that of a student's registration or enrollment." [This clarification evidently will carry forward into new OIs. (Interim OI 8 CFR 214.2(f)(8)(iv), 29 October 1991)] Each institution may establish its own criteria as to what constitutes registration or enrollment.

Elsewhere in the same issue, the *GAB* describes among the "circumstances satisfying the verification of a student's attendance ... student reports to the international student office, providing address and completing reports required by that office during the orientation period before classes begin."

Circumstances such as these warrant close consultation between the receiving school and the school whose Form I-20A-B was used to enter the United States. The receiving school must ascertain whether the student has met the "reporting requirement" and, if so, whether the "old" school objects to the student taking up attendance at the "new" school. The DSO at the receiving school should be sensitive to the institutional policies of the school that issued the Form I-20A-B used on entry, and the DSOs at both schools will want to be sensitive to the student's academic aspirations. When discussion concludes that the student is not eligible for the school-transfer procedure, the student should be advised either to remain at the school to which he or she was originally destined or to seek reinstatement to attend the preferred school (see Section 4.10).

4.8.2 Procedures

To effect a transfer of schools, the student must:

1. inform the school the student is currently authorized to attend of his or her intention to transfer;

2. obtain Form I-20A-B from the school he or she plans to attend in accordance with the eligibility provisions of 8 CFR 214.3(k) (see Section 4.4);

3. enroll in the new school in the first term after leaving the previous school or the first term after vacation (this requirement is implicit if the applicant is to meet the eligibility criterion of maintaining status);

4. complete item 11 of Form I-20A-B and submit the form to a "designated school official on campus within 15 days of beginning attendance at the new school" [8 CFR 214.2(f)(8)(ii)]; and

5. submit his or her current Form I-20 ID to a DSO at the new school. [This item is not explicitly required under INS procedures for transfer of schools; it is implied by the requirement of maintaining a photocopy of the student's Form I-20 ID (see Section 3.5.2) and the need to add the student's Form I-20 ID (Admission) number to the new school's Form I-20A-B.]

An F-1 student transferring within a school system must follow these procedures unless both schools have identical school codes.

Federal regulations provide that, upon receipt of the Form I-20A-B, the DSO at the new school must:

> [1] note "transfer completed on (date)" on the student's [new Form] I-20 ID in the space provided for the DSO's remarks, thereby acknowledging the student's attendance [also note the student's old Form I-20 ID (admission) number in the appropriate space on the new Form I-20A-B];
>
> [2] return the [new and old Forms] I-20 ID to the student;
>
> [3] submit the [Form] I-20 School copy to the Service's Data Processing Center within 30 days of receipt from the student; and
>
> [4] forward a photocopy of the Form I-20A-B School Copy to the school from which the student transferred. [8 CFR 214.2(f)(8)(iii)]

Failure of the DSO to follow these procedures after the student has complied with his or her responsibilities with regard to transfer procedures constitutes cause for withdrawal of a school's approval to enroll F-1 students (see Section 3.6.1). [8 CFR 214.4(a)(l)(iii)]

According to the November 1988 *Government Affairs Bulletin*, an INS official "indicated that completion of ... the [above] process within *45 days* [emphasis added] satisfies the intent of the procedure, which is to keep the [INS] student data file current."

A student also may accomplish the procedure for school transfer through his or her reentry to the United States from abroad. Such a student should obtain a Form I-20A-B executed by the new school for the new program. The new school's DSO should check blocks 3(a)-"Initial attendance at this school" and 3(c)-"School transfer," adding the name of the student's previous school. A student following this alternative is presumed to be bound by the same application deadlines as if applying in the United States.

An F-1 academic student may attend another school during an authorized vacation period without applying for transfer, provided he or she is eligible and intends to register for the next term at the authorized school.

The October 1991 regulations governing transfer of schools contain modest but favorable changes in the 1987 regulations. The most positive change is that receiving schools no longer need be concerned about the Form I-20A-B completion date for a student's previous program, even if the student is transferring at the same academic level and for the same program of study. The receiving school is free to assign a new completion date based on its own institutional policy (see Section 4.3.6).

INS has trimmed its transfer regulations considerably but continues to require the DSO at the receiving school to establish an incoming student's lawful status. Specifically, the October 1991 regulations require that an incoming student be "maintaining status." [8 CFR 214.2(f)(8)(i)] "Maintaining status" is defined elsewhere in the regulations as "making normal progress toward completing a [full] course of study." [8 CFR 214.2(f)(5)(i)] Accordingly, the 1991 regulations require that a student be maintaining status as defined by the previous school's DSO, the de facto criterion broadly applied under the 1987 Operations Instructions. Moreover, INS also has carried forward the prescription that "the DSO may adopt whatever method is most expedient" to confirm a transfer student's status. [Interim OI 8 CFR 214.2(f)(8)(iv), 29 October 1991]

Many DSOs will find it expedient to review relevant documents in a transfer student's possession in a good-faith effort to ascertain whether the student was maintaining status at his or her previous school. Much may reasonably be inferred from these documents. For example, INS relies on Form I-20 ID certifications for purposes of F-1 student reentry to the United States. If a transfer student were to present a Form I-20 ID recertified the term before arriving at the new school's campus, it would appear unnecessary for a DSO to apply a stricter standard than that followed by INS itself—unless the DSO knows the student to be ineligible for transfer. Alternatively, DSOs may wish to ask transfer students to present transcripts of their attendance at previous schools. It is hoped that DSOs will not find it necessary to besiege one another with institutionally generated "status verification forms" that only add to the immigration paper blizzard.

4.8.3 Student not pursuing a full course of study

If a student has not pursued a full course of study at the school last authorized to attend, he or she is not eligible for transfer of schools but must apply for reinstatement to student status (see Sections 4.8.1 and 4.10). [8 CFR 214.2(f)(8)(i)]

4.8.4 Transfer of schools after leaving the United States

A student may be readmitted to the United States to attend a school other than that specified in the student's visa, regardless of whether the transfer procedures have been followed prior to departure. If the transfer procedures have not been followed prior to reentry, the student must present both a new Form I-20A-B from the school to which he or she intends to transfer and all Forms I-20 ID the student has been issued. [8 CFR 214.2(f)(4)(ii) and 8 CFR 214.2(f)(2)] The student may expect the immigration officer at the port of entry to retain the new Form I-20A-B and return the new Form I-20 ID endorsed with an INS stamp reflecting admission to the United States. The INS officer is instructed to forward the new Form I-20A-B to INS's Data Processing Center to update the student's record (see Sections 4.4.1.2 and 4.11.2).

4.9 EMPLOYMENT

Dramatic changes in F-1 student employment options were produced by (1) the Immigration Act of 1990, which largely became effective 1 October 1991; (2) the October 1991 revision of the F-1 regulations (the employment-related provisions of which became effective 29 October 1991); and (3) a subsequent July 1992 interim final rule reinstating work options eliminated in the October 1991 rule. The resulting regulations (1) promulgated a 3-year pilot program for part-time, off-campus employment based on the unavailability of U.S. workers; (2) merged precompletion and postcompletion practical training into one 12-month category termed "optional practical training"; (3) modified criteria for on-campus employment, employment based on severe economic hardship, curricular practical training, and optional practical training; and (4) promulgated use of the Employment Authorization Document (EAD), Form I-688B. A summary of the relevant 22 May 1987 regulations previously in effect is provided in selected sections, particularly if transition rules apply or there has been a significant restriction of benefits for the category of employment.

"Employment" means the rendering of services on either a part-time or full-time basis for compensation, financial or otherwise, including self-employment. Although investing is not considered employment, working in a business in which a student is an investor is considered employment. [*Wettasinghe v. U.S. Department of Justice* 702 F.2d 641 (6th Cir. 1983)] An F-1 student may accept employment or engage in business only under certain conditions and, in the cases of optional practical training and employment based on severe economic hardship, only after securing INS approval.

The regulations divide employment of F-1 students into several categories: on-campus employment, off-campus employment, practical training, and employment sponsored by a certain type of international organization.

Permission to accept any employment, regardless of whether that employment is part of an academic program, is automatically suspended if the secretary of labor certifies to INS that a strike or other labor dispute involving a work stoppage is in progress at the student's place of employment. [8 CFR 214.2(f)(14)]

Special provisions pertain to citizens of the Republic of the Marshall Islands and the Federated States of Micronesia. Citizens of these countries, including F-1 students, are permitted to be employed in the United States. They must nevertheless apply to INS on Form I-765 (without fee) for an Employment Authorization Document evidencing their eligibility to work.

Special provisions also pertain to F-1 students from the People's Republic of China who were in the United States on or before 11 April 1990. These students are eligible for off-campus employment without establishing economic necessity. To maintain their F-1 status, "they [must] limit their work to no more than 20 hours a week when school is in session." [INS cable, 1 March 1990] Employment authorization is granted generally for the period ending 1 January 1994. [INS cable, 7 May 1990] The application results in issuance of an Employment Authorization Document (EAD). [8 CFR 274a.12(a)(11), *Federal Register*, 23 August 1991, pp. 41786-7] (See Appendix 13)

4.9.1 On-campus employment

An F-1 student may accept employment at the institution he or she is authorized to attend without prior approval from INS, provided the student is enrolled in a full course of study and the employment will not displace a U.S. resident. [8 CFR 214.2(f)(9)(i)] In this context "displace a U.S. resident" means that an on-campus employer may not remove a U.S. worker to hire a foreign student. However, an on-campus employer does not need to verify that there are no U.S. workers available before hiring a foreign student.

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On-campus employment primarily means work performed on the school's premises. It includes employment with "on-location commercial firms which provide services for students on campus, such as the school bookstore or cafeteria." [8 CFR 214.2(f)(9)(i)] It does not include employment on the school's premises for a commercial firm that is not providing on-campus services for students, for example, at a construction site for a new school building.

It may also include work "at an off-campus location which is educationally affiliated with the school.... In the case of off-campus locations, the educational affiliation must be associated with the school's established curriculum or related to contractually funded projects at the post-graduate level ... [and] the employment must be an integral part of the student's educational program." [8 CFR 214.2(f)(9)(i)] In the preface to the October 1991 regulations, INS elaborates on its conception of "educational affiliation by contract." The Service acknowledges that expansion of the definition of on-campus work was a response to complaints "that many professors have contract-based research grants which are not payable through the educational institutions. Including this type of 'contractually-based educational affiliation' would enable graduate students to conduct research under the supervision of their professors. Noting the similarity in the above-described employment and a graduate research assistantship, the Service adopted this suggestion." [Supplementary Information to 8 CFR 214, *Federal Register*, 29 October 1991, p. 55609]

INS has provided an example of on-campus work under what it has coined the "extended campus" concept:

> The anthropology department of university X has entered into an agreement with the Museum of Natural History in city Y to conduct a joint research program on colonial Americans. Students of anthropology from university X who are part of the research project attend classes and/or work on the research project as research assistants at the museum.... These research assistants are considered to be engaging in on-campus employment in conjunction with their educational program at a location that is educationally related to the school. [Interim OI 8 CFR 214.2(f)(9)(i), 29 October 1991]

In this example, the students may be paid by either the museum or the university.

On-campus work is limited to 20 hours per week while school is in session. Such employment may be full time during vacation periods for students who are eligible and intend to register for the subsequent academic term. There is no exclusion from the overall 20-hour-per-week ceiling for work undertaken pursuant to a scholarship, fellowship, assistantship, or postdoctoral appointment.

On-campus employment is not permitted after completion of a course or courses of study, except employment authorized for practical training, unless the student has been "issued a Form I-20A-B to begin a new program in accordance with the provision of 8 CFR 214.3(k) and ... intends to enroll for the next regular academic year, term, or session at the institution which issued Form I-20A-B." [8 CFR 214.2(f)(9)(i)] For example, a student who completes a bachelor's degree in May and has been issued a Form I-20A-B to begin a master's program in September may work on campus over the intervening summer. If the new Form I-20A-B is from a different school, the student may engage in on-campus work on the campus of the new school before classes begin or on the campus of the old school until the new school's classes begin.

4.9.2 Off-campus employment

An F-1 student may be authorized to work off-campus while school is in session either through the pilot off-campus employment program or based on severe economic hardship (off-campus employment pursuant to practical training is discussed in section 4.9.3). In either case, the student must be enrolled in F-1 status for 1 full academic year and be in good academic standing. Employment is limited to part time (20 hours per week or less) while school is in session and full time during holidays or school vacations. Employment authorization is automatically terminated if the student ceases to maintain lawful status.

4.9.2.1 Pilot off-campus employment program

The 1990 Act's student-employment pilot program provisions—which are temporary and expire on 30 September 1994—prescribe that an F-1 student is eligible for part-time off-campus employment without prior approval of INS provided (1) the student is in "good academic standing as determined by the DSO," (2) the student has been "in F-1 status for 1 full academic year" [PL 102-232, 12 December 1991], (3) the employer wishing to employ the F-1 student has filed a wage and recruitment attestation for the position offered to the student with the Department of Labor (DOL) and the DSO of the school the student is authorized to attend, and (4) the student's employment is limited to 20 hours per week while school is in session (employment may be full time when school is not in session). An eligible student may apply for off-campus employment authorization to the DSO of the school he or she is authorized to attend. The DSO may authorize permission to work "in 1-year intervals" for the period the student is expected to maintain duration of status in a study activity or until 30 September 1994, whichever is earlier, and may renew the authorization "only if the student is maintaining status and good academic standing." Employment may begin only after the student's Form I-20 ID has been properly endorsed by the DSO. [8 CFR 214.2(f)(9)(ii)(A) and (E)]

An employer must file a wage and recruitment attestation within the 60 days following a required 60-day recruitment period. The employer may hire F-1 students within 90 days of the close of recruitment. In its simplest form, the sequence might be 60 days of recruitment, followed by the filing of an attestation in the next 60 days, followed by the hiring of an F-1 student in the last 30 days (see Sections 4.9.2.1.2 and 4.9.2.1.2.3).

The student's employment authorization is specific to a particular job, employer, and locality, and automatically terminates if the student fails to maintain F-1 status or the employer is disqualified from participating in the pilot program. There is no formal mechanism for enforcing termination of employment upon loss of F-1 status. The INS states that "DSOs are not responsible for monitoring a student's authorized off-campus employment beyond verifying that the student is maintaining good academic standing" at the time of the student's application for initial or renewed employment authorization. [Supplementary Information to 8 CFR 214, *Federal Register*, 29 October 1991, pp. 55609-10] However, upon appropriate notification, DSOs are responsible for advising students that they must terminate employment when DOL invalidates the labor attestation on which their employment authorization is based (see Section 4.9.2.1.2.3). To fulfill this responsibility, DSOs will need to track students associated with particular employment attestations. A simple tracking system might make use of a folder for each employer; DSOs authorizing employment would file a photocopy of a student's annotated Form I-20 ID in the folder corresponding to the student's employer.

Students who violate the terms of their authorized employment are considered out of status and also will be subject to the disqualifying provisions of 8 CFR 245.1(b) should they later seek adjustment of status to permanent residence. Violating employers fall subject to the employer-sanction provisions of 8 CFR 274a.

Multiple employment is permissible provided that (1) aggregate employment does not exceed 20 hours per week (including both on- and off-campus employment) while school is in session and (2) each employment situation is individually authorized. Employment authorization is valid for the period certified by the DSO (up to 1 year) while a student remains in status. Authorization does not terminate when a student transfers to another school, provided the student continues employment with the same employer in the same location and capacity; such a student may work until the expiration of his or her work authorization. However, to renew work authorization, such a student must reestablish eligibility for off-campus work authorization with the new school's DSO. [Interim OI 8 CFR 214.2(f)(9)(ii)(E)]

To be eligible for employment authorization, a student must have been specifically in F-1 status for 1 academic year. A student may count his or her annual vacation period toward the academic year in-status requirement. For example, a student beginning full-time studies on 10 January who completes the semester, takes his or her school's normal summer vacation, and then resumes studies in the fall semester would be eligible for employment on 10 October—9 months from 10 January.

A student who has been temporarily absent from [the United States] for 5 months or less during the first [academic] year is considered to have satisfied the 1-year in-status requirement and is eligible for employment authorization. Any student who has been absent for more than 5 months during the first year is not eligible for employment authorization, however, until such a student has been in status for another 9 months. [Interim OI 8 CFR 214.2(f)(9)(ii)(A)]

INS has confirmed that its use of "9 consecutive months" in defining an academic year is exemplary only. An institution or school system that has an 8-month academic year or trimester calendar satisfies INS's definition of an academic year. Students enrolled in schools with quarterly calendars are expected to complete the equivalent of 3 quarters to be eligible for employment.

INS's use of "consecutive" with regard to months-in-status will restrict employment eligibility for a student who has interrupted his or her F-1 status by either failing to maintain status or holding another status. An example is an F-1 student who was enrolled for the spring semester, changed status to H-1 during his or her summer vacation, and returned to F-1 status for the fall semester. Unlike the student in the previous example, this student would be required to maintain F-1 status for the full academic year (September to May or June) before establishing or reestablishing eligibility for employment.

Part-time off-campus employment authorization has two components, reflecting the need for both the employer and student to establish eligibility under the pilot program: (1) acceptance of the employer for purposes of filing an attestation, which establishes the employer's eligibility, and (2) certification by the DSO, which establishes the F-1 student's part-time work authorization. Jurisdiction over attestation procedures has been assigned to DOL, which published implementing regulations on 6 November 1991 as an interim final rule retroactive to 1 October 1991. [20 CFR 655, *Federal Register*, 6 November 1991, pp. 56860-80] Jurisdiction over F-1 student employment lies with the attorney general [Act, 221(a)], who has delegated this authority to INS. It is hoped that the DSO's formal role in part-time off-campus employment authorization will be limited and straightforward. Whatever the shape of the final regulations, however, DSOs are well advised to anticipate that explaining the attestation procedure will become a necessary part of their informal obligations.

DOL has engendered a significant jurisdictional issue in its interim final regulations. In (1) requiring that DSOs notify DOL of an employer's failure to provide the DSO with an "accepted for filing" attestation copy, and (2) prescribing that DOL notice of employer disqualification—either directly or through publication in the *Federal Register*—is "sufficient" for DSOs to terminate the employment authorization of an implicated F-1 student, DOL appears, at best, to have muddied the waters and, at worst, to have usurped INS authority over the terms of lawful employment (see Section 4.9.2.1.1). The absence of express sanctions for failing to notify DOL with regard to the first point is somewhat reassuring. DSOs will be more concerned, however, with the implications of the prescription under the second point. The DOL's apparent intrusion into INS's domain appears untenable and unlikely to be retained in Labor's final rule. DSOs are advised to keep abreast of NAFSA updates on this issue. In the interim, however, DOL's regulations are operational and are addressed below, with controversial elements identified.

4.9.2.1.1 Procedure for Off-Campus Employment Under the Pilot Program. A student who is the beneficiary of a wage and recruitment attestation requests off-campus employment authorization by completing Section A of Form I-538 (rev. 8 July 1991 or later), questions 1 through 6, and submitting the form to the DSO. By endorsing the Form I-538, the DSO certifies (1) receipt of the prospective employer's attestation (Form ETA-9034, Attestation by Employers for Off-Campus Work Authorization for F-1 Students), (2) that the student has been in F-1 status for at least 1 academic year, and (3) that the student is in good academic standing as defined by the DSO.

The DSO's authorization is noted on the student's I-20 ID and must conform to the following wording, "part-time employment with (name of employer) at (location) authorized from (date) to (date)." [8 CFR 214.2(f)(ii)(E)] The DSO must forward the endorsed form I-538 and an attached copy of the labor attestation to the INS Data Processing Center. The DSO may also wish to give the student an informational copy of the attestation so that the student may know precisely which job titles or classifications are appropriate to his or her employment authorization.

The beginning date of authorized employment corresponds to the date of DSO approval. The ending date may extend for 1 calendar year or for the period the F-1 student maintains eligibility to work under duration of status in a study activity, whichever ends earlier. Renewal of employment authorization is similarly governed, provided that in no case does authorization extend beyond 30 September 1994, the expiration date of the student employment pilot program.

Multiple attestation-based employment is consistent with both DOL and INS regulations. The DSO should note employment authorization on the student's Form I-20 ID for each employer, location, or position.

The DSO's obligation to be in receipt of a labor attestation is satisfied by a photocopy of Form ETA-9034. The regulations prescribe that the employer will "send" a copy of the attestation to the DSO but do not specify the method of transmittal. DSO's may anticipate employers faxing attestations or providing them to students for hand-delivery, both of which methods appear acceptable. [20 CFR 655.900(b)(3)(ii), *Federal Register*, 6 November 1991, p. 56865]

The DSO may accept either a copy of an attestation that has been filed simultaneously with DOL, or a copy of an attestation that has "ETA's acceptance indicated thereon.... Where the employer has chosen to file the attestation simultaneously with DOL and the DSO ... the employer shall provide a copy of the accepted attestation to the DSO within 15 days after receiving the accepted attestation from DOL." [20 CFR 655.900 (b)(3)(iii), *Federal Register*, 6 November 1991, p. 56865] In a controversial requirement, DOL's regulations state that "the DSO shall notify ETA if the educational institution has not been provided with a copy of the attestation indicating that it was accepted for filing by ETA within 90 days from the date that the attestation was filed with the DSO." [20 CFR 655.940(c)(3), *Federal Register*, 6 November 1991, p. 56868] DOL's requirement is directive, but failure to comply carries no explicit penalty; in any event, it is difficult to conceive how DOL would monitor compliance. DSOs are also required to refer to the *Federal Register* for a twice-yearly listing of disqualified employers, presumably both before authorizing employment and as an ongoing verification of continued employment eligibility, according to another controversial DOL provision. [20 CFR 655.910(c)(ii), *Federal Register*, 6 November 1991, p. 56866] Furthermore, when an employer has been disqualified as the result of enforcement proceedings, it is DOL's position that DOL notice of such disqualification, "upon receipt by the school, shall constitute sufficient notice for the DSO to revoke work authorization(s) and refuse to issue new work authorization(s) for employment of F-1 students by the employer." [20 CFR 655.1055(b)(2), *Federal Register*, 6 November 1991, p. 56875]

The DSO does not evaluate attestations; that responsibility lies with the Department of Labor, whose procedures provide that DOL will notify INS should an attestation be deemed unacceptable. It is clear that DOL regulations place on INS the burden of notifying the DSO that the attestation underlying a student's employment authorization has been found unacceptable and that the student is required to discontinue employment with the related employer. A student who discontinues employment on receipt of such a notification will not be penalized for the employer's failure to satisfy attestation requirements. Less clear is by whom and to what extent DSOs will be held responsible for monitoring the *Federal Register* and DOL notices of disqualification.

4.9.2.1.2 Attestation. The purpose of the attestation procedure is to "safeguard the job opportunities and wages of U.S. workers." [Supplementary Information to 20

CFR Part 655, *Federal Register*, 6 November 1991, p. 56860] The attestation process is administered by the DOL's Employment and Training Administration (ETA). Complaints and investigations regarding attestations are administered by DOL's Employment Standards Administration (ESA).

Employers wishing to hire F-1 students for part-time, off-campus employment, either related or unrelated to the student's studies [PL 102-232, 12 December 1991], are required, within 60 days of the close of their recruitment efforts, to file Form ETA-9034 with the appropriate DOL regional office attesting to unsuccessful efforts at recruiting domestic workers for the position or positions in question and that the wages to be paid the F-1 student are consistent with DOL's wage guidelines. "The employer may file an attestation for [1] a single position, or [2] for multiple positions in the same occupation, or for [3] [multiple positions] in multiple occupations, provided that all positions are located within the same geographic area of intended employment." [20 CFR 655.940(c)(2), *Federal Register*, 6 November 1991, p. 56868]

Attestations are valid effective on the date "received and date-stamped by the [DOL] Regional Certifying Officer" and continue valid until 30 September 1994, unless the employer is disqualified by DOL.

> During the validity period of an attestation ... the attesting employer may hire, during the 90-day period following the last day of its 60-day recruitment period, or at any time [after the initial 60-day recruitment period] if the employer has placed an "open job order" with the [State Employment Security Agency (SESA)] ... F-1 students as needed from as many educational institutions as it deems necessary to fill the positions specified in the attestation, at the location(s) specified in the attestation, and at the "required wage rate." [20 CFR 655.940(h), *Federal Register*, 6 November 1991, pp. 56869-70]

Employers with an ongoing need to fill vacancies will find that an open job order with the local State Employment Security Agency will greatly facilitate their ability to hire F-1 students. Employers with intermittent or seasonal employment needs will require more careful planning to ensure that recruitment requirements are satisfied at the point when they wish to begin hiring F-1 students.

An employer may withdraw an attestation at any time, provided the attestation is not under investigation. The employer must make a written request to the regional certifying officer with whom the attestation was originally filed; it is also the "employer's responsibility to promptly notify the DSO at each school where F-1 students it employs are enrolled." [20 CFR 655.940(i), *Federal Register*, 6 November 1991, 56870]

The principal components of attestation are the (1) 60-day recruitment procedure and its documentation, (2) prevailing and actual wage determinations and their documentation, (3) filing procedure, (4) record-keeping requirements, and (5) penalties for false attestation.

4.9.2.1.2.1 Recruitment procedure and its documentation. "An employer seeking to employ an F-1 student shall attest on Form ETA-9034 that it has recruited for at least 60 [consecutive] days for the position(s) and that a sufficient number of U.S. workers were not able, qualified, and available for the position(s)." [20 CFR 655.940(d), *Federal Register*; 6 November 1991, p. 56868] The employer may establish compliance with this requirement by (1) posting a job order for the position with the local SESA office within the area of intended employment for 60 consecutive days, and (2) posting a notice of the position vacancy at the proposed work site for 60 consecutive days. The corresponding attestation may be filed at any time within the 60 days following the employer's recruitment period.

Employers anticipating an ongoing need to fill vacancies may maintain an open job order with the local SESA office for the relevant position or positions for the period of anticipated need or until 30 September 1994. An employer who has satisfied the initial 60-day SESA and work-site posting requirement and engages in continuous SESA posting remains in compliance with the recruitment requirement throughout the life of the attestation. Employers who file an attestation but do not engage in continuous recruitment need not file a new attestation should they later wish to hire for the same position, even if more than 90 days have passed since the previous recruitment period. If hiring is contemplated for position(s) described in an employer's previous attestation, the employer need only refresh the recruitment process by again recruiting for 60 days through postings at the work-site and SESA office before offering the position(s) to F-1 students.

Employers must retain documentation of the particulars of both the State Employment Security Agency and work-site postings. In addition, the results of the recruitment efforts must be recorded by the employer "in a contemporaneous written summary" for each position for which an attestation was filed by the employer. As stated in the *Federal Register*:

> [The] summary should include: (A) The number of job openings in each occupation included in the [attestation]; (B) The number of U.S. workers and F-1 students that applied for each position; (C) The number of U.S. workers that were hired; (D) The number of F-1 students that were hired; (E) The number of U.S. workers that were not hired; and (F) The lawful job-related reason(s) for which each U.S. worker was not hired. [20 CFR 655, Appendix A(a)(iv), *Federal Register*, 6 November 1991, p. 56871]

4.9.2.1.2.2 Prevailing wage determinations, actual wage determinations, and their documentation. Employers must attest that they will pay F-1 students the "required wage rate," which DOL defines as the "higher of: (1) the actual establishment wage rate for the occupation in which the F-1 student is to be (or is) employed, or; (2) the prevailing wage rate (adjusted on an annual basis) for the occupation in which the F-1 student is to be (or is) employed in the geographic area of intended employment." [20 CFR 655.920, *Federal Register*, 6 November 1991, p. 56867] Accordingly, an employer is required to ascertain both actual work-site wages for "similarly employed" workers and prevailing wages in the geographic area for the occupation in question. DOL defines "similarly employed" workers as employees "having substantially comparable jobs." The employer must pay these employees, whether domestic workers or F-1 students, the "required wage rate." [20 CFR 655.940(e)(1), *Federal Register*, 6 November 1991, pp. 56868-69]

Documentation that satisfies the wage element of the attestation procedure will include customary payroll records relating to the F-1 student employee's earnings, hours worked, and payroll deductions—all required to establish the actual wages paid to employees in the occupation—and one of the following to establish the prevailing wage: (1) a prevailing wage survey published by an authoritative source within 2 years of the attestation filing, or (2) a prevailing wage finding from the local SESA. [20 CFR 655, Appendix A(b)(4) and (5), *Federal Register*, 6 November 1991, pp. 56871-72] The employer is required to maintain and annually update prevailing wage documentation for all occupations covered by any attestation for the validity of the attestation, or until the attestation is withdrawn. Moreover, "the employer's obligation to pay the 'required wage rate' for the positions named in the attestation shall continue throughout the validity period of the attestation." [20 CFR 655.940(e)(1), *Federal Register*, 6 November 1991, pp. 56868-69] The F-1 student's wages must be adjusted if they fall below those of "similarly situated" workers or the rate of pay determined in annual prevailing wage updates.

4.9.2.1.2.3 Filing procedure. An attestation on Form ETA-9034 must be filed with the DOL regional office having jurisdiction over the work site within 60 days of the conclusion of the employer's recruitment period. The Form ETA-9034 (one signed original and one copy) may be submitted to DOL by mail, private carrier, or facsimile transmission and must be signed by the employer or the employer's hiring representative. The employer may at the same time send an exact copy of the ETA-9034 to the DSO of the institution at which the employer seeks to hire F-1 students. The attestation satisfies the DSO's documentation requirement even if it has not been accepted for filing by DOL. However, if the employer is in possession of an attestation that has been accepted for filing by DOL (evidenced by a DOL stamp to that effect), the employer is required to send a copy of the accepted attestation to the DSO. [20 CFR 655.940(b), *Federal Register*, 6 November 1991, pp. 56867-68] When an employer files simultaneously with DOL and the DSO, the employer must provide the DSO a copy of the DOL date-stamped attestation within 15 days of receiving the accepted attestation from DOL (see Section 4.9.2.1.1).

When the DOL regional certifying office receives an employer attestation, it makes no determination of the bona fides of the attestation. The sole reasons for not accepting an attestation for filing are: (1) failure to complete or sign Form ETA-9034 or (2) previous disqualification from participating in the F-1 off-campus, part-time work pilot program. The DOL will return an incomplete attestation and allow an employer 15 days to complete and return the attestation. If the attestation is not resubmitted within the 15-day period, DOL will notify INS to advise affected DSOs to terminate off-campus employment authorization based on the unaccepted attestation. [20 CFR 655.940(f), *Federal Register*, 6 November 1991, p. 56869] Since the names of student employees will not be listed on attestations, the implication is that DSOs will need to track students associated with particular employment attestations (see Section 4.9.2.1).

An accepted attestation is valid until 30 September 1994, the expiration date of the F-1 student-work-authorization program, unless it has been withdrawn by the employer or invalidated by DOL. During the period of its validity, the employer may hire as many F-1 students from as many schools as it wishes to fill the positions described in the attestation, provided the employer remains in compliance with the recruitment and wage requirements detailed above (see Sections 4.9.2.1.2.1 and 4.9.2.1.2.2). An employer wishing to hire an F-1 student in a position not covered by its attestation must file an attestation related to the additional position.

4.9.2.1.2.4 Record-keeping requirements. "The employer shall have the burden of proving the truthfulness and accuracy of each attestation element in the event that such attestation element is challenged in an investigation. Substantiating documentation in support of each attestation element must be maintained by the employer and shall be made available to DOL for inspection and copying upon request." [20 CFR 655.910(b)(ii) and (iii), *Federal Register*, 6 November 1991, p. 56866] Employers are required to retain documentation for 18 months beyond the end of a recruitment period or the finding or updating of "required wage" data. [20 CFR 655.940(d)(2)(ii) and (e)(2)(ii), *Federal Register*, 6 November 1991, pp. 56868-69] Failure to provide documentation will itself disqualify an employer, even if the employer is otherwise in compliance with the terms of an attestation.

4.9.2.1.2.5 Penalties for false attestation. DOL regulations provide for public access in each DOL region to a list of employers that have filed attestations. Any individual or organization may challenge the validity of an attestation. Investigation of challenges falls under the DOL Wage and Hour Division, which will receive complaints and, if it determines that there is reasonable cause, conduct investigations of attesting employers. An employer who files an attestation that, upon investigation, is found to be materially false is subject to disqualification from participation in the F-1 student-employment program and, when "knowing and willful submission of false statements to the Federal Government" are proven, is also subject to federal criminal statutes. [18 U.S.C. 1001; see also 18 U.S.C. 1546]

4.9.2.2 Off-campus employment based on severe economic hardship

F-1 students are eligible to apply for off-campus employment based on severe economic hardship without having to follow the procedures for the pilot program (Section 4.9.2.1.1) provided that: (1) they are in good standing and carrying a full course of study; (2) they can demonstrate unforeseen severe economic hardship; (3) employment opportunities on campus or under the pilot program are otherwise unavailable or insufficient; (4) they have been in F-1 status for 1 academic year; and (5) acceptance of employment will not interfere with the students' carrying a full course of study. Provisions for off-campus employment based on severe economic hardship were absent in the regulations from October 1991 until July 1992, when they were reinstated.

INS states that circumstances deemed "severe economic hardship due to unforeseen circumstances beyond the student's control" may include "loss of financial aid or on-campus employment without fault on the part of the student, substantial fluctuations in the value of currency or exchange rate, inordinate increases in tuition and/or living costs, unexpected changes in the financial condition of the student's source of support, medical bills, or other substantial and unexpected expenses." (8 CFR 214.2 (f)(9)(ii)(C), *Federal Register*, 20 July 1992, p. 31955).

Students wanting to apply for off-campus employment based on severe economic hardship will need to make a good-faith effort to locate employment both on campus or under the pilot off-campus employment program. In introductory language to the 20 July 1992 rule, INS suggests the following approach be taken by students and DSOs to meet this requirement: The student should consult with his or her DSO to determine whether there are any employment opportunities under the pilot program available in the area. If opportunities are available, the student should pursue such employment under the pilot program. If opportunities under the pilot program exist but are deemed insufficient, the DSO's certification on Form I-538 will satisfy this obligation. Further, if the DSO knows of no opportunities available either under the pilot program or on campus, the certification on Form I-538 will also satisfy this requirement (*Federal Register*, 20 July 1992, p. 31955).

Regarding the 9-month-in-status rule, INS has confirmed that its use of "9 consecutive months" in its implied characterization of an academic year is exemplary only. An institution or school system which has an 8-month academic year or trimester calendar also satisfies INS's definition of an academic year. Students enrolled in schools with quarterly calendars are expected to complete the equivalent of 3 quarters to be eligible for off-campus employment based on severe economic hardship.

A student may count his or her annual vacation period toward the academic-year-in-status requirement. For example, a student beginning full time studies on 10 January who completes the semester, takes his or her school's normal summer vacation, and then resumes studies in the fall semester, would, should the need arise, be eligible to apply for off-campus employment based on severe economic hardship on 10 October—9 months from 10 January.

4.9.2.2.1 Procedure for off-campus employment based on severe economic hardship. To apply for off-campus employment based on unforeseen severe economic hardship, a student must submit a completed request on Form I-538 to a DSO at the authorized school of attendance. The DSO's certification of Form I-538 indicates that employment opportunities under the pilot program or on campus are unavailable or otherwise insufficient. As Form I-538 [rev. 7 August 1991] has not yet been revised to reflect changes in the regulations, DSOs will need to add language to the front of the form indicating a request for off-campus employment based on economic hardship. INS has recommended that on the front page of Form I-538 under section 9, DSOs write the following after 'Check one:' Severe Economic Hardship Authorized in accordance with 8 CFR 214.2(f)(9)(ii)(C) until [date]. DSOs do not need to endorse the student's I-20 ID.

Upon receipt of the DSO's certification on Form I-538, the student should submit the following to the INS office having jurisdiction over his or her place of residence: (1) Form I-20 ID, (2) certified Form I-538, and (3) From I-765 (application for employment authorization) with fee. Students will also want to submit supporting materials documenting the unforeseen nature of the economic hardship and, to the extent possible, the unavailability of employment under the pilot program or on campus. Documentation of the latter might include: a letter from the student explaining the circumstances of the hardship, copies of a recent exchange transaction showing the currency level, or a letter from the primary source of funding indicating why the hardship could not have been foreseen.

INS will notify the student of the decision. If employment is authorized, INS will issue the student an Employment Authorization Document (Form I-688B). The student cannot begin employment until he or she obtains the EAD. Employment authorization will be granted in 1-year intervals up to the expected date of completion of the student's course of study. Off-campus employment based on economic hardship can only be renewed by INS and only if the student continues to maintain lawful status and good academic standing. If the application is denied, INS will indicate the reason for the denial. A denial may not be appealed. [8 CFR 214.2(f)(9)(ii)(F)]

4.9.3 Practical training

An F-1 student may be eligible to engage in temporary employment for practical training in his or her field of study, both before and after completion of studies. A student in an intensive English-language training program is not eligible for practical training.

Practical training is divided into two categories: (1) curricular practical training before completion of studies and (2) optional practical training both before and after completion of studies.

To be eligible for optional practical training, a student must have been in lawful status for "9 consecutive months." Curricular practical training also requires satisfying the 9-consecutive-months-in-status requirement unless the F-1 student is engaged in a graduate study program which requires that he or she begin an internship earlier. [8 CFR 214.2(f)(10)(i)] Accordingly, a master of social work student (MSW) who is required to begin fieldwork in his or her first term would be immediately eligible for curricular practical training. A bachelor's candidate in a cooperative education program would have to satisfy the 9-months-in-status requirement.

INS has confirmed that its use of "9 consecutive months" to characterize an academic year is exemplary only. An institution or school system that has an 8-month academic year or a trimester calendar also satisfies INS's definition of an academic year. Students enrolled in schools with quarterly calendars are expected to complete the equivalent of 3 quarters to be eligible for practical training.

A student may count his or her annual vacation period toward the academic-year-in-status requirement. For example, a student beginning full-time studies on 10 January who completes the semester, takes his or her school's normal summer vacation, and then resumes studies in the fall semester, would be eligible for practical training on 10 October—9 months from 10 January.

INS's use of "consecutive" with regard to months-in-status will restrict practical-training eligibility for a student who has interrupted his or her F-1 status by either failing to maintain status or holding another status. An example is an F-1 student who was enrolled for the spring semester, changed status to H-1 during his or her summer vacation, and returned to F-1 status for the fall semester. Unlike the student in the previous example, this student would be required to maintain F-1 status for the full academic year (September to May or June) before establishing or reestablishing eligibility for practical training.

To be eligible for practical training, a student need not have been specifically in F-1 status for 9 months, provided he or she attended an INS-sanctioned school in lawful nonimmigrant status for at least 9 months prior to changing status to F-1 and requesting practical training. Persons who have been attending schools as J-1 students or dependents of A, E, F, G, H, I, J, L, and N categories are affected; presumably, dependents of O, P, Q, and R categories also benefit. Aliens attending in violation of their status—INS views this as applying to principal aliens in B-2 status—may not take advantage of this provision. [INS cable, 6 April 1990]

Students may engage in curricular practical training only after they have received Form I-20 ID endorsed to show such eligibility, and only for the specific employer, location, and period indicated on the form. [8 CFR 214.2(f)(10)(i)(c)] Students may begin optional practical training only after they have been issued an Employment Authorization Document (EAD) by INS, and only for the period indicated on the EAD.

4.9.3.1 Curricular practical training

Students enrolled in a college, university, conservatory, or seminary whose training program is "an integral part of an established curriculum" may apply to the DSO for curricular practical training authorization. Such training is defined as "alternate work/study, internship, cooperative education, or any other type of required internship or practicum which is offered by sponsoring employers through cooperative agreements with the school." [8 CFR 214.2(f)(10)(i)]

The October 1991 regulations provide little comfort to DSOs who have been grappling with eligibility standards for curricular practical training since the construct was formally introduced in May 1987. DSOs continue to face a choice: adhere to a narrow definition of curricular practical training, which facilitates eligibility decisions but severely limits the number of eligible students, or take a more expansive view that requires a thorough and frequently difficult examination of the nuances of each practicum, but opens this important educational benefit to greater numbers of students. DSOs wishing to gain a full understanding of the terms of curricular practical training, as defined by the October 1991 regulations, will need to combine the sparse regulatory language found at 8 CFR 214.2(f)(10)(i) with the elaborating discussion found in the preface to the October 1991 revision and in subsequent cables. Only through such combination is it possible to clarify INS's use of the pivotal terms, "required" and "sponsored."

The preface to the October 1991 regulations speaks of "both required and optional curricular practical training." [Supplementary Information to 8 CFR 214, *Federal Register*, 29 October 1991, p. 55611] The regulations themselves speak only of "required" curricular practical training; when preface and regulations are combined, however, it is reasonable to infer INS's intention to provide for practica that are required of all students as well as those required for a particular course or curricular track. In both cases, the courses or track must constitute "an integral part of an established curriculum." In the latter case, the DSO would need to establish that the practicum represents satisfaction of the requirements for the particular course or track, but not that the particular course or track is an invariable part of a program of study.

"Sponsored" employment is not directly defined, but INS's discussion of postcompletion practical training provides guidance. It appears that "unsponsored" employment is employment that is "unstructured and unmonitored by the schools" and sought through "the open market." [Supplementary Information to 8 CFR 214, *Federal Register*, 29 October 1991, p. 55611] INS has elsewhere characterized unsponsored employment as "self-study." [INS-NAFSA meeting, 13 November 1991] "Sponsored" is defined conversely as structured employment that is monitored by the school and obtained through the support of the educational institution.

An example of curricular practical training required of all students would be supervised fieldwork for the MSW degree. All MSW candidates are required to work with a different social service agency each semester of a four-semester program. In no case may the "fieldwork instruction" requirement be waived. An arts administration internship requirement for the degree of master of fine arts (MFA) would be another example. Periods of internship with one or more arts organizations are arranged in consultation with each candidate for the MFA in arts administration, and the internship is a formal and explicit requirement for the degree. A third example of curricular practical training would be a doctoral student engaged in research for the universally required dissertation. The research involves innovative technology available only at a particular corporation's R&D facilities. The student takes employment at the business's laboratory for the purpose of engaging in essential data collection that is integral to his or her educational program.

An example of curricular practical training required for a particular course or curricular track would be the following: A student studying marketing for his or her MBA degree is offered several options to fulfill the concentration in marketing. For one of the options, a paid internship is required. In this case, the internship would qualify as curricular practical training because it is required for a particular course or track, even though it is not required of all MBA students.

The Service is clearly concerned about potential abuses of this option. In an effort to address some of the ambiguities in the regulations, INS issued a cable on 22 January 1992 discussing curricular practical required for a particular course but not for all students pursuing a degree. In this case, INS states that such training can be classified as curricular practical training if the student receives course credit. "The training program must be listed in the school's course catalogue with the assigned number of credits and the name of the faculty member teaching the course clearly indicated. There should also be a description of the course with the course objectives clearly defined. Students enrolled in such a course may work out the details of their specific projects within the established course objectives under the supervision of the instructor." (INS cable, 22 January 1992, pp. 3–4).

DSOs are therefore well advised to document rigorously the rationales for training authorizations required for a particular course or curricular track. At a minimum, qualifying curricular practical-training courses will carry academic credit, be listed in a school's regular bulletin of course offerings, and have a faculty member assigned to teach the course. It is particularly important that any employment experience required by the course be instrumental to achieving a curricular academic objective. A course offered for the primary purpose of facilitating employment authorization does not qualify for curricular practical training.

The following example does not have formal INS endorsement but would appear consistent with the guidelines for training required for a particular course or tract. A 3-credit field-studies course (Field Studies B9002-01) is offered as an elective to U.S. and international students by a graduate school of business. The course, which counts toward the 20-course MBA requirement, offers students an opportunity to apply the theories and key themes established in the MBA core courses in a dynamic, real-time setting. The course is listed in the school's regular course catalog and is taught by three members of the full-time business school faculty. The instructors are appointed by the dean. Grading is on a pass/fail basis. The field-studies course is open to all students who have completed at least two terms at the business school; it requires completion of a paid or unpaid internship of at least 6 weeks. Students register for the course in the term in which the internship takes place. The two specific requirements for B9002-01 are:

1. Prior to the start of the field study, students wishing to enroll in the course are expected to prepare a proposal that specifies the field-study site, the nature of the field work, the planned area of study, and the study objective. Areas of study may include (i) relating the work assignment to a key core theory or theme, (ii) defining a management problem and proposing a solution, (iii) developing a marketing plan for a new or existing product or service, or (iv) other topics considered appropriate by the faculty instructional committee. The proposal must be approved by the student's faculty supervisor prior to enrollment or commencement of field work.

2. At the conclusion of the field study, the on-site field-work supervisor must submit a student-evaluation

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form. The student must prepare a report of 10 to 12 pages on the topic selected for study. Finally, the student must participate in a field-study debriefing held by the course faculty for the benefit of other field-study students and the general student body. The evaluation and report are due on the last day of classes of the term during which the field study takes place; the field-study debriefings are held during the term following the field study.

Following publication of the October 1991 regulations, a debate surfaced in the academic community regarding cooperative education programs. At the core was the question, "Does practical training offered through a university cooperative education office, which is an integral part of the curriculum but not required either for a particular course or of all students, constitute bona fide curricular practical training?" A 24 May 1992 cable states that practical training obtained through cooperative education programs, whether required or not, meets the terms of curricular practical training. INS states, "Curricular practical training by definition may be ... cooperative education ... which is offered by sponsored employers through cooperative agreements with the school. Curricular practical training offered through institutionally sponsored cooperative education ... is usually optional and not-for-credit." [INS cable, 24 May 1992, p. 1]

Students are not limited in the amount of curricular practical training they may utilize. Students who have engaged in 1 year or more of full-time curricular practical training, however, are ineligible for optional practical training. Regulations distinguish between full- and part-time curricular practical training authorization. [8 CFR 214.2(f)(10)(i)(B)] Curricular practical training entailing employment of 20 or fewer hours per week is considered part time and requires concurrent coursework during the academic year to maintain status as a full-time student. Employment of more than 20 hours per week is considered full-time curricular practical training. INS counts only full-time curricular practical training in determining eligibility for optional practical training. Part-time curricular practical training is not counted toward the 1-year threshold at which a student loses eligibility for optional practical training. [INS-NAFSA meeting, 13 November 1991]

4.9.3.1.1 Procedure to apply for curricular practical training. To apply for curricular practical training, a student must submit the following to a DSO at the authorized school of attendance: (1) a completed request for curricular practical training on Form I-538, and (2) Form I-20ID.

Regulations require no further documentation. However, the DSO is well advised to develop a procedure that documents establishing student eligibility (see Section 4.9.3.1). Students will have to present a job offer to the DSO, as the regulations require the DSO to authorize training with a specific employer.

To certify the student's eligibility to engage in curricular practical training, the regulations state that the DSO must do the following:

(1) Certify the Form I-538 and send the form to the Service's data processing center;

(2) Endorse the student's [Form] I-20ID with 'full-time (or part-time) curricular practical training authorized for (employer) at (location) from (date) to (date)'; and

(3) Sign and date the [Form] I-20ID before returning it to the student. [8 CFR 214.2(f)(10)(i)]

4.9.3.2 Optional practical training before and after completion of studies

In regulations promulgated 20 July 1992, INS merged the existing category of postcompletion practical training with the previously existing (prior to October 1991) category of precompletion practical training into one category called "optional practical training." An F-1 student may apply to INS for optional practical training directly related to his or her major area of study after being enrolled for 9 consecutive months.

Optional practical training falls into four categories: (1) during the student's annual vacation and at other times when school is not in session if the student is currently enrolled and eligible, and intends to register for the next term or session; (2) while school is in session, provided that optional practical training does not exceed 20 hours a week; (3) after completion of all course requirements for the degree (excluding thesis or the equivalent), if the student is in a bachelor's, master's, or doctoral degree program; and (4) after completion of the course of study. Training under the first three options would occur before completion of a course of study, while the last option would occur following completion of a course of study. [8 CFR 214.2(f)(10)(ii)]

Optional practical training may be granted for a maximum of 12 months. Although students may engage in optional practical training before and after completion of studies, the total amount of time available is 12 months. For example, if a student uses 12 months of pregraduation optional practical training, he or she is ineligible for postgraduation practical training. A student, however, can use a chosen amount of optional practical training before graduation and a chosen amount after graduation, so long as the total does not exceed 12 months. Optional practical training will be calculated on a daily basis, with part-time practical training (20 hours per week or less) being deducted from the available practical training at one-half the full-time rate. Practical training following completion of a course of study must be completed within 14 months of completion of studies.

A student may apply for optional practical training after completion of a course of study even if he or she intends to engage in more than one course of study. However, an F-1 student may be authorized to engage in a total of 12 months optional practical training for the duration of student status.

To be authorized to undertake optional practical training, a student must apply to the DSO for recommendation for optional practical training and, based on the DSO's endorsement, apply to INS for an EAD, Form I-688B. The effective date of EAD authorization for practical training prior to completion of a course of study will be either the date employment is scheduled to commence, as reflected by the DSO's endorsement on the I-20 ID, or the date an EAD is issued—whichever occurs later. The effective date of EAD authorization for practical training after completion of a course of study will be either the date of completion of studies, as reflected by a DSO's endorsement, or the date an EAD is issued—whichever occurs later. If the effective date of practical training following completion of a course of study is the date an EAD is issued, and issuance occurs more than 2 months after completion of studies, a student will not be authorized for a full 12 months (if 12 months of eligibility are available) but will have a training-ending date 14 months after the date of completion of studies.

Once an EAD has been issued, there is no provision for recision of the length of practical training granted. For example, a student who is issued an EAD for practical training following completion of a course of study and who fails to complete the degree as indicated by the DSO's endorsement continues in lawful status, provided the student does not begin full-time training employment until he or she completes studies (the student could work part-time). Practical training time lost as a consequence of delayed completion may not be recovered. [INS-NAFSA meeting, 13 November 1991]

No specific job offer is required either to request recommendation for optional practical training or to apply for the EAD. [8 CFR 214.2(f)(10)(ii)(B) and (f)(11)] However, students seeking optional practical training prior to program completion are advised to secure a job offer prior to applying for the EAD so as to ensure that time available for optional practical training is not lost.

4.9.3.2.1 Procedure to request recommendation for optional practical training. To request recommendation for optional practical training, the student must submit a completed Form I-538 without fee, and a Form I-20 ID to a DSO at the school he or she is authorized to attend. The regulations stipulate that this must be done "during the same 120-day period when the DSOs are authorized to recommend practical training." [8 CFR 214.2(f)(11)] Although not defined in the most recent INS regulations (20 July 1992), the 120-day period previously referred to the period 90 days prior to completion of the course of study, and 30 days after completion of the course of study. Because the 120-day time frame is not defined in the July 1992 regulations, students requesting recommendation for practical training prior to completion of studies can apply up to 120 days prior to commencement of the employment. Likewise, students can wait up to 60 days after completion of studies to apply. Sixty days reflects the period of time F-1 students are still in-status before departing from the United States. During the 60-day period, students may apply for optional practical training (see Section 4.4.1.3). Final regulations from INS are likely to clarify the time period during which students must request practical training.

Pre-October 1991 regulations required certification that comparable employment was not available in the country of the student's foreign residence. This requirement was dropped in the 29 October 1991 regulations.

To approve a request for recommendation for optional practical training, the DSO must:

1. certify on Form I-538 that the proposed employment is directly related to the student's major area of study and commensurate with the student's educational level;
2. endorse and date the [Form] I-20 ID to show that optional practical training in the student's major field of study is recommended full time (or part time) from (date) to (date); and
3. return to the student the [Form] I-20 ID and send to the INS data processing center the school certification on Form I-538. [8 CFR 214.2(f)(10)(ii)(D)]

To be authorized to accept employment for optional practical training, the student "must apply for the EAD on Form I-765 at the INS office having jurisdiction over his or her place of residence, during the same 120-day period when the DSOs are authorized to recommend practical training. (The application process includes a required personal appearance.)" [8 CFR 214.2(f)(11)] The student must submit the following documents to the INS office: Form I-765, with fee, and Form I-20 ID bearing the DSO's recommendation for optional practical training.

The INS will adjudicate the I-765 and, based on the DSO's recommendation, issue an EAD (Form I-688B) "unless the student is found otherwise ineligible." [8 CFR 214.2(f)(12)] If ineligibility is determined, the student will receive written notice of the reason. There is no formal appeal from a denial, but the student may file a motion requesting review of the decision (see Section 13.3.2).

DSOs should be aware that adjudication of practical training before completion of a course of study is still under review at INS. In the preamble to the July 1992 rule, INS states, "The integrity issues pertaining to issuance of an EAD to an eligible F-1 student [applying for practical training prior to completion of a course of study] are undergoing further policy review." [*Federal Register*, 20 July 1992, p. 31954] DSOs should look to future regulations and updates from NAFSA regarding possible procedural changes.

Students may anticipate wide variation in INS processing time for EADs. While some Service offices may be able to accommodate same-day adjudication, the more common experience, particularly in large metropolitan areas, will be a wait of several weeks to several months.

INS regulations provide that if an employment application has not been adjudicated within 90 days of receipt by INS, the applicant will be granted 240 days of interim employment authorization. [8 CFR 274a.13, *Federal Register*, 23 August 1991, p. 41787] To take maximum advantage of the relief provided by this interim authorization, DSOs would do well to advise their F-1 students to apply early. Procedures for application under the "90-240-day rule" will vary by immigration district. For the most part, however, the student should go in person to the INS office where he or she filed an I-765 for practical training more than 90 days earlier. A student who presents a dated receipt or canceled check for the I-765 filing fee and a photocopy of the original application may reasonably expect to be issued an EAD, Form I-688B, the same day.

Regulations do not require either the DSO or INS to review a job offer to determine if it is appropriate to a student's optional practical training. This determination appears, by default, to fall to the employer, who is required to establish that "the alien will be employed only in an occupation which is directly related to his or her studies." [8 CFR 274a.12(c)(3)(i)] A student may change employers during the period of authorized practical training provided that the new employment continues to be directly related to the student's field of study and commensurate with his or her educational level.

A student authorized to engage in practical training is considered in status for the period authorized, plus 60 days in which to depart from the United States if practical training follows completion of a course of study. Employment is not permitted, however, during the 60-day period to depart.

An F-1 student who wants to terminate practical training and begin a new program of study must follow the procedures discussed in Sections 4.8.2 and 4.7.3, respectively, for transfer of schools or for continuation from one educational level to another at the school last authorized to attend.

If the training sought by an F-1 student cannot be completed within the maximum practical training period for which he or she is eligible, permission to engage in practical training may not be authorized. A change to another nonimmigrant status is called for in these cases. That other nonimmigrant status may be H-1B (for those completing programs that qualify them to practice a specialty occupation), H-3 (for trainees at a lower or less-specialized level of education), or J-1 (if the graduate's prospective employer is the sponsor of an exchange-visitor program whose activities encompass the proposed training). (See Section 2.7 concerning changes of nonimmigrant classification.)

4.9.3.2.2 Prior regulations. Until 29 October 1991 practical training was divided into two categories: precompletion practical training (which included curricular practical training) and postcompletion practical training. Students were eligible for 12 months of pre- and 12 months of postcompletion practical training. With the exception of curricular practical training, precompletion practical training was removed from the October 1991 regulations and not made available until July 1992 when the benefit was reinstated and merged with postcompletion practical training. Previous use of precompletion practical training (prior to 29 October 1991) will not affect eligibility for the 12 months of optional practical training available under the new regulations [NAFSA-INS Meeting, 5 October 1992].

Prior to October 1991 practical training following completion of studies was divided into two 6-month periods designated by INS as the first period and second period of practical training. Students were permitted to begin employment for the first period of practical training based solely on DSO endorsement of the I-20 ID. To obtain a second 6-month period, students were required to apply to INS within 30 days of beginning qualified employment and before the expiration of the first period. A timely application for the second period permitted the applicant to continue employment until either (1) notification of INS denial or (2) the completion of 12 months of employment, counted as beginning no later than 60 days after completion of studies. Students who wished to use only one period of practical training following completion of a program, so as to preserve a training opportunity following completion of their next program, were permitted to split postcompletion practical training into two 6-month segments.

Transition rules honored unexpired authorizations granted under prior regulations. An unexpired DSO authorization for the first period of practical training or INS approval of the second period of practical training is sufficient to establish employment authorization. [Supplementary Information to 8 CFR 214, *Federal Register*, 29 October 1991, p. 55612]

A student who has been authorized a first period of practical training, but has not been authorized a second period—regardless of whether a timely application is pending—must apply for the balance of what is now termed optional practical training following the procedure at Section 4.9.3.2.1. Students who split their "post completion practical training are required to apply to the Service for the remaining 6 months." The application procedure is essentially that described in Section 4.9.3.2.1, but additionally requires DSO certification that the student had been previously authorized to split postcompletion practical training. [Supplementary Information to 8 CFR 214, *Federal Register*, 29 October 1991, p. 55612]

Postcompletion practical training authorizations granted prior to 29 October 1991 are recognizable as follows: (1) for the first period of practical training, a student's Form I-20 ID will show DSO endorsement of the "date until which employment is authorized; the occupation or field in which the employment is authorized; the name, title and signature of the DSO; and the date and location of the endorsement." [8 CFR 274a.12(c)(3)(ii), pre–29 October 1991]; and (2) for the second period of practical training, a student's Form I-20 ID will show an INS approval stamp and INS notation specifying the date until which employment is authorized; the occupation or field; the name, title, and signature of the authorizing officer; and the date and location of the endorsement. [8 CFR 274a.12(c)(3)(ii), pre–29 October 1991]

4.9.3.3 Travel and reentry while engaging in practical training

An F-1 student engaged in authorized curricular or optional practical training before completion of studies would follow the same procedure for visits abroad and reentry (see Section 4.11) required of a full-time student.

An F-1 student in practical training following completion of studies who travels outside the United States temporarily can be readmitted for the remainder of the authorized training period, provided the student presents Form I-20 ID endorsed by the DSO within the preceding 6 months (presumably, the DSO's recommendation for practical training counts as an endorsement) and an unexpired EAD (Form I-688B). [8 CFR 214.2(f)(13)(ii)] Students should be reminded that they will still need a valid F-1 visa. The school may issue Form I-20A-B for reentry to continue practical training or endorse the student's Form I-20 ID, provided practical training has been authorized by INS (see also Section 4.11.2).

If a student has completed his or her studies and leaves the United States before optional practical training is authorized, he or she will not be able to obtain permission for practical training upon return to the United States if, indeed, the student is permitted to reenter the country at all. Time spent abroad during authorized practical training is charged against the student's practical training time.

4.9.4 Employment under sponsorship of certain international organizations

A special situation exists for F-1 students who have been offered employment under the sponsorship of an international organization, as defined by the International Organization Immunities Act. [59 Stat. 669] A student seeking permission to work for such an organization makes application to the INS district office having jurisdiction over his or her residence by submitting the following: "[1] a written certification from the organization that the proposed employment is within the scope of the organization's sponsorship, [2] [a Form] I-20 ID endorsed for reentry by the DSO within the last 30 days, and [3] a completed Form I-765, Application for Employment Authorization, with the fee required." The student may not begin employment until he or she has been issued an EAD. [8 CFR 214.2(f)(9)(iii)] Although not stated in the regulations, a student seeking permission to work under the sponsorship of such international organizations must also complete Form I-538. Upon DSO endorsement, this form should be forwarded to the student data processing center in London, KY.

Qualifying international organizations hiring F-1 students for vacation or short-term employment may offer or require students to change their nonimmigrant classification to A (diplomatic) or G (international organization). DSOs will wish to advise students that such a change of status, while advantageous in some circumstances, has been described by an INS official as interrupting F-1 status for purposes of qualifying for off-campus employment or practical training (see Sections 4.9.2 and 4.9.3).

4.9.5 Verification of employment eligibility

The Immigration Reform and Control Act (IRCA) of 1986 (PL 99-603) created statutory provisions prohibiting the unlawful employment of aliens. Regulation 8 CFR 274a provides for a verification system of employment eligibility designed to prevent the employment of unauthorized aliens. It contains a section specifying the classes of aliens, including students in F-1 status, who are authorized to accept employment [8 CFR 274a.12], and a section specifying particular documents that must be presented by the alien and verified by the employer to establish eligibility for employment. [8 CFR 274a.2(b)]

Part-time on-campus employment (see Section 4.9.1) "is authorized by the school and no specific endorsement by a school official or Service officer is necessary" to show that the employment is authorized. [8 CFR 274a.12(b)(6)(i), *Federal Register*, 29 October 1991, p. 55616] On-campus employers commonly cite a student's Form I-20 ID completion date (item 5) as the expiration date of the student's on-campus employment authorization. In the case of a student working on campus following completion of studies and before transferring to another INS-approved school (see Section 4.9.1), the on-campus employer would reasonably cite the new school's Form I-20A-B reporting date (item 5) as the expiration date of the student's on-campus employment authorization.

Authorization for off-campus employment under the pilot program (as discussed in Section 4.9.2) is shown on Form I-20 ID, which is endorsed by the DSO as follows, "part-time employment with (name of employer) at (location) authorized from (date) to (date)." [8 CFR 214.2(f)(9)(ii)(E) and 8 CFR 274a.12(b)(6)(ii)] No INS endorsement is necessary.

Authorization for off-campus employment due to unforeseen economic hardship is granted by INS, which issues the EAD showing the starting and ending dates of employment authorization. Authorization is also noted on the I-20 ID. [8 CFR 214.2(f)(9)(ii)(F)(2) and 8 CFR 274a.12(c)(3)(iii)]

Authorization for curricular practical training employment appears on Form I-20 ID, which is endorsed by the DSO as follows, "full-time (or part-time) curricular practical training authorized for (employer) at (location) from (date) to (date)." [8 CFR 214.2(f)(10)(i)(B) and 8 CFR 274a.12(b)(6)(iii)] No INS endorsement is necessary.

Authorization for optional practical training either preceding or following completion of studies is granted by INS, which issues an EAD (Form I-688B) showing the starting and ending dates of employment authorization; the terms and conditions of employment, i.e., F-1 practical training; the identifying number of the INS officer; and the date and location of the endorsement. [8 CFR 214.2(f)(11) and 8 CFR 274a.12(c)(3)(i)].

Similarly, INS grants authorization of F-1 student employment with an international organization by issuing an EAD showing the starting and ending dates of employment authorization; the terms and conditions of employment, e.g., the approved occupation or organization; the identifying number of the INS officer; and the date and location of the endorsement.

4.9.6 Social Security coverage

Prior to the Tax Reform Act of 1984, and subsequent regulations promulgated 24 April 1992, contributions for Social Security (FICA tax) were not to be withheld from wages of nonimmigrant F-1 aliens if the employment was authorized. Recent changes in the regulations, however, make F-1 students subject to FICA tax withholdings if they are "residents for tax purposes." Generally, F-1 students become "residents" for tax purposes after they have been in the United States for 5 years. The April 1992 regulations are retroactive to 1 January 1985, the effective date of the 1984 law. [57 *Federal Register* 15237, 27 April 1992]

Under the following circumstances, however, F-1 students remain exempt from FICA withholdings, regardless of the amount of time spent in the United States. These cases include services performed (1) by an enrolled student for the school he or she regularly attends; (2) for state and local governments, unless an agreement with the federal government is involved; (3) for a foreign government; and (4) for an international organization.

4.9.7 Income tax

Earnings from F-1 student employment, including income from assistantships, are usually subject to federal, state, and local income taxes. Additional information on F-1 students' federal income tax obligations may be found in Internal Revenue Service publications 515, "Withholding on Nonresident Aliens and Foreign Corporations," and 519, "U.S. Tax Guide for Aliens" (see Appendix 8 and Appendix 12).

4.10 REINSTATEMENT TO STUDENT STATUS

An F-1 student who has overstayed his or her authorized period of stay or has otherwise failed to maintain F-1 student status (see Section 4.5) may be reinstated to lawful F-1 status at the discretion of an INS district director. The student makes application on Form I-539 (Application to Extend Status/Change Nonimmigrant Status) with fee (see Appendix 1), accompanied by an updated or initial Form I-20A-B from the school the student is attending or wishes to attend, and the original Form I-94 (Arrival/Departure Record). It is strongly suggested, but not specifically required, that the student include his or her last Form I-20 ID, documentation showing funding for the intended course of study, and a written statement. The INS director may reinstate the student to lawful F-1 status, if he or she:

(A) Establishes to the satisfaction of the INS director that the violation of status resulted from circumstances beyond the student's control or that failure to receive reinstatement to lawful F-1 status would result in extreme hardship to the student;

(B) Is currently pursuing, or intending to pursue, a full course of study at the school which issued the Form I-20A-B;

(C) Has not engaged in unauthorized employment; and

(D) Is not deportable on any ground other than section 241(a)(1)(B) or (c)(i) of the Act [overstaying or failing to maintain status]. [8 CFR 214.2 (f)(16)(i)]

A special case arises in connection with nationals of the People's Republic of China protected by Executive Order 12711 and in the United States under the terms of Deferral of Enforced Departure (DED). Correspondence between NAFSA and INS has resulted in the following clarification:

> DED is not a lawful status from which change of status [or reinstatement] can be made. However, Executive Order 12711 provides the presumption of lawful status for those PRC nationals who were in a lawful nonimmigrant status at any point between June 5, 1989, and April 11, 1990, should they seek change of status or adjustment of status before January 1, 1994. Consequently, a PRC national who is on DED now and who was in status between June 5, 1989, and April 11, 1990, may request change of status from his or her prior nonimmigrant status to another prospective nonimmigrant status. Going back to a J-1 or H-1 does not constitute a change of status. Thus, F-1 or J-1 students must request reinstatement to get back to their original nonimmigrant status. [Larry J. Weinig, INS deputy assistant commissioner for adjudications, 4 January 1991] (See also Section 4.12.)

If an order to show cause and notice of hearing has been issued, the application for reinstatement should be made to the INS district director in whose district the

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order was issued or where the hearing is being held; if an order to show cause and notice of hearing has not been issued, application should be made to the INS director in whose district the applicant is temporarily located, regardless of whether the intended school is in that district. [Cable of 1 November 1985 to INS field offices from Harriet B. Marple, assistant commissioner, adjudications]

If the reinstatement application is approved, INS endorses the Form I-20A-B, retains p. 1-2 for transmittal to INS's Data Processing Center, and returns the Form I-20 ID (p. 3–4) to the student. Although there is no formal appeal from a denial, the applicant may seek reconsideration through a motion (see Section 13.3).

4.11 VISITS ABROAD AND REENTRY

Whenever F-1 students wish to leave the United States temporarily and return to continue studies at the institution in which they are enrolled, they must secure the necessary documents to permit entry to another country and reentry to the United States.

4.11.1 Entry into another country

F-1 students who wish to visit temporarily their country of citizenship or permanent residence generally will be allowed to enter that country if they hold a valid passport or other travel document issued by that country.

4.11.1.1 Entry into Canada

All F-1 students wishing to visit Canada require Canadian visitor visas unless they are citizens of countries that are exempt from the Canadian nonimmigrant visa requirement. A list of such countries appears in Appendix 10. The Canadian government will issue a visitor visa to a student in the United States only when convinced that the student is readmissible to the United States. The Canadian government advises that, at least three weeks in advance of their planned trip to Canada, students submit to the appropriate Canadian consular post a completed visitor-visa application form (Form IMM 1296) with required fee, valid passport, Form I-94, two passport-sized photographs, proof of adequate funds for the stay in Canada, current Form I-20A-B, old Form I-20A-B if a new Form I-20A-B is issued specifically for the trip to Canada, and Form I-20 ID. These documents should be sent by certified mail, along with a return envelope with postage paid for certified mail.

For citizens of some countries, an interview is required before a Canadian visitor visa will be issued. Students wishing to visit Canada should telephone the Canadian consulate general in their area to ascertain the need for an interview and the days and hours of the consulate's operation.

When traveling to Canada, an F-1 student should carry each of the documents required for the issuance of the visitor visa plus evidence of return transportation arrangements and sufficient funds for the period of contemplated stay in Canada. At certain points of entry, it is advisable to have a letter from the foreign student adviser certifying the student's current enrollment at the institution.

4.11.1.2 Entry into Mexico

Mexican diplomatic authorities in the United States have indicated that information regarding visitor or tourist visas is too complex to be answered in a general manner. Some individuals may be exempt from visa requirements based on treaties between their country of origin and Mexico.

Requirements for other individuals vary with the nationality of the prospective visitor. It is suggested that inquiry be made at the closest Mexican consulate. The addresses and phone numbers of all consulates located in the United States may be found in Department of State publication 7846, "Foreign Consular Offices in the United States," available from the Superintendent of Documents (see Appendix 8).

4.11.2 Requirements for reentry into the United States

4.11.2.1 General

In order to reenter the United States after a temporary absence of 5 months or less, an F-1 student must have the following documents: a valid passport or travel document and a valid visa (unless exempt from passport and visa requirements—see Sections 2.2.4 and 2.3.2), and either a properly endorsed Form I-20 ID (p. 4 of Form I-20A-B), if there has been no substantive change in the information contained in items 4, 5, 7, and 8 on the student's most recent Form I-20A-B, or a new Form I-20A-B, if there has been such a change. [8 CFR 214.2(f)(4)] As a matter of practice, INS officials at ports of entry require that the Form I-20 ID bear a DSO certification for reentry executed in the current term—if a student is reentering during the academic year—or, if a student is returning from his or her annual vacation, executed in the term preceding the vacation. The endorsement on p. 4 may be executed even if there has been a change in the date the student is expected to report to the school. If a student loses the Form I-20 ID, a DSO may issue a duplicate Form I-20 ID with the student's INS admission number noted, provided it is in all respects (except reporting date) identical to the original.

A "temporary" absence for the purpose of readmission with an endorsed p. 4 of Form I-20A-B is defined as an absence of 5 months or less. A substantive change in the total estimated expenses in item 7 on p. 1 of Form I-20A-B is customarily defined as a 30 percent increase.

With the exception noted in Section 4.11.2.2.3, a student must have a valid F-1 visa stamp in his or her passport. Consequently, a student who entered the United States in another nonimmigrant classification and has changed status to that of an F-1 student must obtain an F-1 visa (passport stamp) before reentering the country. It is not possible to obtain an F-1 visa inside the United States. An F-1 student who needs to obtain a visa in order to enter the United States after a temporary absence must apply for the visa at a U.S. consular office abroad.

The documents needed by a continuing student for visa issuance are a valid passport, a current photograph, a valid Form I-20A-B completed by a designated official of the school the visa applicant is attending or a properly endorsed p. 4 of Form I-20A-B (the Form I-20 ID) if no substantive change has occurred with regard to items 4, 5, 7, and 8 of the student's most recent Form I-20A-B, and proof of financial capability for continuing studies.

Although it is possible for an alien to secure an original or renewal of an F-1 visa in a foreign country other than his or her own, the student may face more stringent requirements than in the home country. In addition to proving eligibility for an F-1 visa, the student may have to convince the consular officer that there is a legitimate reason for making the application outside the home country. In some instances, the consular officer in the third country will find it necessary to check with the consular office in the student's place of residence. This can be time-consuming and result in a charge to the student if information is requested by cable rather than diplomatic mail. Returning students should be advised to make travel plans to allow for such delays (see also Section 4.4.1.1).

4.11.2.2 Exceptions

4.11.2.2.1 Transfer. If an F-1 student has lawfully transferred schools while in the United States, the visa will specify the former school. Similarly, if an F-1 student intends to transfer schools upon reentering the United States, the visa will specify a school other than the one he or she will attend. In these instances a student may reenter with an unexpired F-1 visa and Form I-20A-B from the new school without having the new school's name endorsed on the visa. If the student has not yet attended the new school, the INS officer at the port of entry will endorse the student's Form I-20 ID to indicate the new school and will send Form I-20A-B to the INS Data Processing Center to record the new school in the INS data system. [8 CFR 214.2(f)(4)]

4.11.2.2.2 Without Form I-20 ID. Occasionally a student will leave the United States temporarily and seek to return to this country without his or her lost, forgotten, or misplaced Form I-20 ID. If while abroad the student discovers the absence of the Form I-20 ID, and time permits, the DSO should issue and send the student a duplicate Form I-20 ID (see Section 4.11.2.1) for use upon reentry. Since the student is supposed to retain all Forms I-20 ID at all times, the absence of the Form I-20 ID on reentry may prompt INS issuance of a Form I-515 (see Section 4.4.3). The lack of a Form I-20 ID will not prevent the student's departure from the United States; it may, however, prevent the student from entering Canada or Mexico. Moreover, even a duplicate Form I-20 ID, which lacks the expected INS admission stamp in the "For Immigration Official Use" box on the top right corner of the form, may be insufficient for the student to obtain entry to Canada or Mexico (see Section 4.11.1).

A student without his or her Form I-20 ID—e.g., because INS has the form in connection with a request for employment based on economic hardship or optional practical training (see Section 4.9.3.2.1)—should be warned to discuss any travel plans and schedule with the DSO, as travel may not be advised. If a student's program of study has been completed, the student has no basis for reentry to the United States as an F-1 student unless he or she has either been admitted to a new program of study and has been issued the corresponding Form I-20A-B or INS has authorized optional practical training after completion of studies. In the latter case, a returning student is required to present both an endorsed Form I-20 ID and an EAD at the port of entry to qualify for readmission to the United States. If an EAD has not been issued and the student has exceeded the "expected date of completion" (Form I-20 ID, item 5), the student has no basis for being readmitted in F-1 status (see also Section 4.9.3.3).

4.11.2.2.3 Automatic revalidation of visas. Under certain circumstances, an F-1 student with an expired visa may reenter the United States as though the visa were still valid. An expired F-1 visa may be considered to be automatically extended to the date of application for readmission to the United States (and therefore the visa in the passport need not have an expiration date that is in the future), provided the F-1 student does the following:

1. applies for readmission to the United States after an absence not exceeding 30 days solely in Canada, Mexico, or adjacent islands other than Cuba;
2. has maintained and intends to resume status as an F-1 student;
3. presents (or is the accompanying spouse or child of an alien who presents) a valid Form I-94 and either a properly endorsed Form I-20 ID (p. 4 of Form I-20A-B), if there has been no substantive change in the information contained in items 4, 5, 7, or 8 on the most recent Form I-20A-B, or a new Form I-20A-B, if there have been substantive changes in that information;
4. possesses a valid passport (unless exempt from passport requirements); and
5. applies for readmission within the authorized period of initial admission or extension of stay.

Furthermore, a person who entered the United States in a classification other than F-1 student, but whose status was subsequently changed to F-1 student, may be considered to have the previous visa automatically revalidated and converted to an F-1 visa if he or she meets the conditions stated above. [22 CFR 41.112(d)]

Thus, under these circumstances, a returning F-1 student whose visa has expired may be saved the necessity of applying for a new visa. A student whose visa has been canceled is not eligible for automatic visa revalidation.

Individuals carrying passports issued from within the United States to replace the passport that contains their original nonimmigrant visa may qualify for automatic visa revalidation only if they have the old passport in their possession.

Citizens of countries that keep the old passport upon issuance of a new one are therefore at a disadvantage when traveling to contiguous territories.

4.11.2.2.4 Advance notification. Under certain circumstances, F-1 students whose visas have expired and who intend to pay temporary visits abroad can request the Department of State to process necessary special clearances in advance of the travel, thus significantly reducing the processing time for actual issuance of the visa. This procedure is known as *advance notification*.

The instructions state that advance notification is administered exclusively on a case-by-case basis only to foreign nationals falling within the two following groups. Applications not meeting the criteria set forth below will not be considered for advance notification processing. *Category 1*: [Soviet, East European, and PRC] nationals requiring special clearances who have expired visas and who are required to travel abroad other than to their home country for a brief period (commonly a week or less) and for a specific purpose, such as to attend a conference, symposium, or panel, or present an academic paper, collaborate on research, etc. *Category 2*: foreign nationals requiring special clearances who have expired visas and who are able to demonstrate compelling humanitarian circumstances necessitating advance notification. The service is not available to nationals of countries with which the United States does not have diplomatic relations.

The effect of advance notification is to notify the consular post that the student will be applying for the visa, that there are no objections from the Department of State or other U.S. government agencies if the visa is issued, and that, in the case of a visa application being made in a third country, there are no objections from the U.S. consular post in the applicant's own country. An advance notification does not guarantee that a visa will be issued; it simply expedites certain clearances.

Application for advance notification is made to the Visa Office, CA/VO/L/C, Room 1343, Department of State, Washington, D.C. 20520-0113. The Visa Office offers the courtesy of providing a form, but the applicant may simply provide the following required information:

1. name and sex of the student
2. date and place of birth
3. occupation in home country
4. employer in home country
5. purpose of visit abroad
6. date of departure from United States
7. date of return to United States
8. U.S. consulate/embassy where applicant will apply for a visa
9. remaining authorized length of stay in the United States upon return from this trip
10. description of reasons for severe hardship or humanitarian concern (if applicable).

Relevant required attachments are:

1. photocopy of expired U.S. visa
2. photocopy of Form I-94
3. photocopy of old and new Form I-20A-B
4. letter and evidence documenting business or professional travel, or severe hardship or humanitarian concern.

The student going to a third country should apply to the appropriate embassy or consulate in the United States for a visa for that country. If the student has any difficulty in obtaining a visitor visa for a third country, the adviser should call the Visa Office of the Department of State at (202) 663-1201.

Students from Eastern Europe and the People's Republic of China do not need to follow these procedures if they are traveling directly to their home countries and are returning directly to the United States in the same visa classification and for the same program of study.

The procedure know as "preauthorization of visa," which had a somewhat broader application, has been superseded as of May 1990 by the advance notification procedure and application.

4.11.2.2.5 Temporary admission with Form I-515. Students who do not have all the required documentation can be expected to be denied entry to the United States. However, an F-1 student (and accompanying dependents, if applicable) who is otherwise eligible for readmission after a temporary absence, but who presents an outdated Form I-20A-B or whose I-20 ID does not have a current certification from a designated official, may be admitted in F-1 status for 30 days and issued Form I-515. Form I-515 instructs the student to submit the appropriate documents to the local INS office within 30 days to obtain an extension of stay for duration of status (see also Section 4.4.3).

4.11.2.2.6 Advance parole for PRC nationals. Any national of the People's Republic of China (PRC) who was in the United States as of 11 April 1990, except for a brief, casual, and innocent departure, is eligible to request advance parole for travel outside the United States. If granted, this allows the PRC national to reenter in the same status and for the same length of stay as he or she had on departure without the need to visit an American consulate or apply for a visa while outside the United States. Application to the INS office having jurisdiction over the PRC national's place of residence is made by letter, including full name and address and stating the reasons for the trip, a specific itinerary and dates of travel, and providing three photographs, copies of Forms I-94 and I-20 ID, and the required fee (see Appendix 1 and Appendix 13). Some district offices will require a personal appearance and presentation of original documents. INS will issue a Form I-512 (Authorization for Parole of an Alien into the United States) with notation of the dates of permitted travel and the statement that "the holder of this document will be readmitted under the Executive Order 12711 of 11 April 1990." [Cable from INS commissioner, 7 May 1990]

The PRC national should exercise great care to ensure that he or she will reenter the United States during the validity period of the advance-parole authorization. There is no procedure for extension of advance parole for an alien outside the United States.

A PRC student who was in good standing as an F-1 student prior to departure should confirm that, on reentry, the INS officer notes on his or her Form I-94 an F-1 classification for duration of status. Only PRC nationals who were out of status prior to their departure should expect a Form I-94 notation authorizing their reentry to the United States in protected status until 1 January 1994.

PRC students in good F-1 standing may expect approval of an advance-parole authorization for travel during vacation periods. The INS generally applies a higher, "nonfrivolous," standard to applications made for travel during the academic year.

Procedures for applying for advance parole vary among INS districts. Among the variations, some districts will permit application several months prior to intended travel, while others allow application to be made only several days before departure. Students are advised to check local INS office requirements as soon as their need for travel is known.

4.12 CHANGE OF STATUS (CHANGE OF NONIMMIGRANT CLASSIFICATION)

4.12.1 Change to F-1 student status

An alien in any nonimmigrant status except C, D, K, or M (and in certain cases J), and except an alien who has entered the United States under the terms of the Visa-Waiver Pilot Program (see Section 11.2.2.6), can apply for a change to F-1 status if he or she has maintained lawful nonimmigrant status up to the time the application is filed. An alien in J status, other than a foreign medical graduate who acquired J status to receive graduate medical education or training, may apply for a change of status only if not subject to the 2-year home-country physical-presence requirement, or if that requirement has been waived (see Section 9.10).

A special case arises in connection with PRC nationals protected by Executive Order 12711 and in the United States under the terms of Deferral of Enforced Departure (DED). Correspondence between NAFSA and INS resulted in the following clarification:

> DED is not a lawful status from which change of status can be made. However, Executive Order 12711 provides the presumption of lawful status for those PRC nationals who were in a lawful nonimmigrant status at any point between June 5, 1989, and April 11, 1990, should they seek change of status or adjustment of status before January 1, 1994. Consequently, a PRC national who is on DED now and who was in status between June 5, 1989, and April 11, 1990, may request change of status from his or her prior nonimmigrant status to another prospective nonimmigrant status. Going back to a J-1 or H-1 does not constitute a change of status. Thus, F-1 or J-1 students must request reinstatement to get back to their original nonimmigrant status. [Larry J. Weinig, INS deputy assistant commissioner for adjudications, 4 January 1991] (See also Section 4.10 and Appendix 13.)

Application for change of nonimmigrant status is made on Form I-539, Application to Extend Status/Change Nonimmigrant Status. The form must be accompanied by a properly executed Form I-20A-B from the admitting institution with item 11 completed and signed by the applicant; the applicant's Form I-94; evidence of financial support; and the required fee (see Appendix 1).

INS officers are instructed to adjudicate all applications for change to F-1 status with reference to the considerations prescribed for consular officers determining eligibility for F-1 visas. In particular, when an applicant intends to study for less than 1 year, evidence of the immediate availability of funds or assurances of support necessary to pay all tuition and living costs for the entire period of study may be required. Documentation of funding for a longer period of intended study is also required. All evidence—including affidavits of support, if the student is dependent on others, and the DSO's figures in the Form I-20A-B items related to tuition and fees, estimated living expenses, and sources of the student's income—is to be "examined critically" in reaching a determination of the applicant's financial ability to pursue the intended course of study. [OI 8 CFR 248.7(b) and (c)]

Three instances of change of nonimmigrant status to that of F-1 student warrant special attention: change from B-2 to F-1, change from F-2 to F-1, and change from M-1 to F-1 if the student has been erroneously classified M-1.

4.12.1.1 Change from B-2 to F-1 status

A nonimmigrant B-2 visitor for pleasure may wish to change to F-1 student status in various sets of circumstances:

1. The student has a B-2 visa bearing the notation "prospective student" (see Section 11.2.2.3). Consular officers are authorized to write "prospective student" on a B-2 visa issued to a person who has been admitted to a particular school and has a Form I-20A-B from that school, but intends to enter the United States more than 90 days before school opens; intends to become a student but has not yet chosen a school in the United States and wishes to visit more than one school before making a selection; needs to be in the United States to take an examination or have an interview that is required for admission to a school; or has credible evidence of admission to a U.S. school but does not have a Form I-20A-B. [OI 8 CFR 248.7(d)] A person with a B-2 visa marked "prospective student" should routinely be able to obtain a change to F-1 status.

2. Conditions in the preceding paragraph may apply, but the consular officer has neglected to write "prospective student" on the B-2 visa.

3. The student entered the United States in B-2 status and, after arriving in the country, decided to attend school, applied to a school, and was admitted and obtained a Form I-20A-B.

4. While outside the United States the student believed he or she would encounter difficulty in securing an F-1 visa from a consular officer, obtained a B-2 visa, and entered the country intending to apply to change to F-1 status here.

Individuals in the first three categories should be able to change to F-1 status, although those in categories 2 and 3 may have difficulty convincing INS of their good faith and should be instructed to provide whatever information or evidence is available to support their contention that they are entitled to change to F-1 status.

Individuals in the fourth category will be denied a change of status because they will have misrepresented their purpose in seeking admission to the United States by failing to reveal their intention to study when applying for a visa and when entering the country. Courts have held that a rapid sequence of events following entry to the United States may demonstrate an individual's preconceived intent to be a student and that the individual did not, in fact, enter the country as a visitor. [*Bitar v. United States*, 582 F. Supp. 417 (D Colo. 1983), citing *Sanghavi v. United States*, 614 F. 2d 511 (5th Cir. 1980)] Consequently, individuals who enter the United States in B-2 status either having already applied to schools or carrying school records with them and applying shortly after entry will be denied a change to F-1 status. DSOs should so advise such individuals. Most of these individuals will want to consider temporarily leaving the United States, obtaining an F-1 visa at a consular office, and reentering the country in F-1 status. Others, who anticipate difficulty in reentering the United States or wish reassurance that they face no unforeseen difficulties, will want to discuss their circumstances with an attorney experienced in immigration law. Such individuals may remain in the United States pending the outcome of a timely application for change of nonimmigrant status and may be able to plan their departure and reentry while the application is pending; individuals who remain in the United States pending adjudication of their applications for change to F-1, however, may be required to leave the United States on short notice, interrupting their program of study at an inconvenient or academically disadvantageous time (see also Voluntary Departure in Section 2.8).

The foreign student adviser should inform a prospective applicant for a change of status from B-2 to F-1 that the application may very likely be denied if the B-2 visa is not marked "prospective student."

4.12.1.2 Change from F-2 to F-1 status

A change of status from F-2 to F-1 requires application on Form I-539 with fee. Applications must be filed with the original Form I-94 Arrival/Departure Record, a properly executed Form I-20A-B, evidence of financial capability, and information about passport validity. Applications should be filed with the local INS office in the applicant's area of residence.

Although regulations at 8 CFR 248.3(c)(5) state that neither an application nor the payment of a fee is required for changing from F-2 to F-1 status, the revised version of Form I-539 (rev. 2 December 1991) changes the application procedure. [INS cable, 27 May 1992]

4.12.1.3 Change from M-1 to F-1 status

If a student has been incorrectly classified in M-1 status, the student may have the classification changed by submitting the following to the INS office having jurisdiction over the school the student was authorized to attend: Form I-20A-B, Form I-94, and a letter from a DSO of the school the student was authorized to attend explaining the reason(s) the student's classification should be changed to F-1. No fee is charged. [OI 8 CFR 248.7(e)]

4.12.1.4 Attendance pending adjudication of change to F-1 status

An applicant for change of nonimmigrant status to F-1 may start attending school even before the application has been submitted. [8 CFR 248.1(c)] No form of employment is permitted, however, until the student receives notice of a favorable adjudication changing his or her status to F-1 (see Sections 4.9.2 and 4.9.3).

4.12.2 Change from F-1 student status

An F-1 student may apply for a change to any other nonimmigrant status for which he or she is eligible by completing either Form I-539, Application to Extend Status/Change Nonimmigrant Status or Form I-129, Petition for Nonimmigrant Worker, as appropriate, and submitting it to INS with the supporting documentation described in the instruction sheet attached to that form.

A change of status from F-1 to F-2 requires application on Form I-539 with fee. Applications must be filed with the original Form I-94 Arrival/Departure Record, the forms I-20ID of the principal alien and the applicant, proof of family relationship to the F-1 principal, evidence of financial capability, and information about passport validity. Applications should be filed with the local INS office in the applicant's area of residence.

Although regulations at 8 CFR 248.3(c)(5) state that neither an application nor the payment of a fee is required for changing from F-1 to F-2 status, the revised version of Form I-539 (rev. 2 December 1991) changes the application procedure. [INS cable, 27 May 1992]

INS will deny an application for change from F to J (exchange visitor) status if it appears that the change is desired primarily to enable the applicant's dependents to apply for permission to accept employment (see Section 4.14.4 and 9.14.4). An exception may be made, at the discretion of the INS director, if the change in status will make the applicant subject to the 2-year foreign-residence requirement of Section 212(e) of the Act (see Section 9.10). [OI 8 CFR 248.5]

4.13 DEPARTURE OR TERMINATION OF STATUS

4.13.1 Responsibility of designated school official

A DSO is required to make available to INS upon request certain information pertaining to a student's enrollment or nonenrollment at the school. Form I-721 (Student Status Form), which required DSOs to report on the status of an INS-generated list of students purported to be under their school's F-1 visa sponsorship, apparently has been discontinued. Future INS data-collection efforts are likely to take the form of a DSO being required to submit at specified intervals a school-generated report on the status of each F-1 student authorized to attend or attending the school. (These requirements are discussed in Sections 3.5.2 and 3.5.3.) There is no obligation, however, to inform INS at any other time of a student's failure to maintain status or of termination of the student's program of study.

4.13.2 Sailing Permit (Certificate of Compliance)

An F-1 student or F-2 dependents may be required to obtain a "sailing permit," known formally as a Certificate of Compliance with Income Tax Laws by Departing Aliens, from the Internal Revenue Service prior to leaving the United States for destinations other than Canada or Mexico. This certificate, which demonstrates that the F-1 student has met all federal income-tax obligations, is issued on Internal Revenue Service Form 1040C or 2063. No sailing permit is needed if the student or dependent, while in F-1 or F-2 status, respectively, "received no gross income from sources inside the United States ... other than (1) Allowances to cover expenses incident to study in the United States (including expenses for travel, maintenance, and tuition), (2) The value of any services or accommodations furnished incident to such study, or (3) Income derived in accordance with the employment authorizations [at] 8 CFR 274a.12 (see Section 4.9.5) that apply to the alien's visa." [26 CFR 1.6851-2T(2)(ii), *Federal Register*, 28 January 1991, p. 3034] As most F-1 students or F-2 dependents in lawful status are likely to qualify for exemption, the sailing permit will be of concern to few. For further information, consult Internal Revenue Service publications 515, "Withholding on Nonresident Aliens and Foreign Corporations," and 519, "U.S. Tax Guide for Aliens" (see Appendix 8 and Appendix 12).

4.13.3 Surrender of documents

An F-1 student departing from the United States (other than for visits of 30 days or less to Canada, Mexico, or adjacent islands other than Cuba) must surrender the Form I-94 to a representative of the carrier providing transportation out of the country at the time of boarding, a Canadian immigration officer at the United States–Canada border, or a U.S. immigration officer at the United States–Mexico border. An F-1 student should not surrender the Form I-20 ID upon departure; it facilitates any later reentry to the United States.

4.14 SPOUSE/DEPENDENT (F-2) STATUS

4.14.1 Eligibility

The spouse and unmarried minor children of an F-1 student may accompany the student to the United States or follow to join the student at a later date. The dependent family members will be accorded F-2 status provided they establish to the satisfaction of the consular officer and the immigration officer at the port of entry that they have sufficient funds to cover their expenses or that other arrangements have been made to provide for their expenses; "that they intend to leave the United States upon the termination of the status of the principal alien"; and, if the dependents are following to join the student, that "the F-1 student is, or will be within 60 days, enrolled in a full course of study or if the student is engaged in approved practical training following completion of studies." [22 CFR 41.61(b)(3) and 8 CFR 214.2(f)(3)]

4.14.2 Issuance of Form I-20A-B for F-2 dependents

If the dependent spouse and unmarried minor children will accompany the student to the United States, the Form I-20A-B that the student submits to the consular officer abroad with his or her application for an F-1 visa (see Section 4.3 and 4.4) may be used to request F-2 visas and entry in F-2 status for the spouse and unmarried minor children. If the dependents follow later to join the student, they will need to submit to the

U.S. consular officer either a properly endorsed p. 4 (Form I-20 ID) of the student's current Form I-20A-B, if there has been no substantive change in items 4, 5, 7, or 8 on pp. 1 and 3 of the Form I-20A-B, or a new Form I-20A-B in the event of substantive changes. If the Form I-20 ID is the appropriate document, it is stated in the preface to the October 1991 regulations that "a reproduced copy of the F-1 student's original [Form] I-20 ID is acceptable if the copy bears an original endorsement for reentry by the DSO." [Supplementary Information to 8 CFR 214, *Federal Register*, 29 October 1991, p. 55612] As this guidance does not appear in the regulations themselves, it is presumed INS will communicate it directly to its officers and the Department of State. It may also be presumed that a photocopy would include both sides of the Form I-20 ID (pp. 3-4 of the Form I-20A-B). If a new Form I-20A-B is issued for the purpose of enabling dependents to obtain F-2 visas and join the student, box "d" in item 3 is checked. The names of the spouse and children are to be entered in the designated space on p. 4.

It is particularly important for the student to be aware of the additional expense of having the family in this country. The DSO should review expenses with the student and seek documentation of the student's ability to provide for the entire family before endorsing p. 4 of Form I-20A-B or issuing a new form.

4.14.3 Obtaining a visa and entering the United States

4.14.3.1 Aliens subject to passport and visa requirements

An F-1 student's spouse and unmarried minor children who are required to have a valid passport (or travel document) and visa for entry to the United States (see Sections 2.2.4 and 2.3.3) must apply for the F-2 visa at a U.S. consulate or embassy. The applicant must present the consular officer with a properly endorsed p. 4 (Form I-20 ID) of the student's current Form I-20A-B or with a new Form I-20A-B, as described in Section 4.14.2, and such other documents as may be required to demonstrate eligibility for F-2 status (see Sections 4.14.1 and 2.3).

If the visa application is approved, p. 4 (Form I-20 ID) of the student's Form I-20A-B or the new Form I-20A-B, whichever was presented, is returned to the applicant for use in applying for admission to the United States. When the family members arrive at the port of entry, they present their passports (or travel documents) and a properly endorsed p. 4 (Form I-20 ID) of the student's Form I-20A-B or the new Form I-20A-B to the immigration inspector. Upon admitting the alien to the United States, the inspector issues the alien a Form I-94, showing the date and place of entry, classification, and authorization to stay in the United States for duration of status. This means the F-2 dependents may remain as long as the F-1 student maintains status. F-2 dependents do not receive their own individual Form I-20 ID, as F-1 students do.

4.14.3.2 Aliens not subject to passport and visa requirements

The F-1 student's spouse and unmarried minor children who are not subject to passport and visa requirements (see Sections 2.2.4 and 2.3.2) and who wish to enter the United States in F-2 status may apply directly to an immigration inspector at a port of entry. The procedure is otherwise the same as that followed by aliens required to meet passport and visa requirements.

4.14.4 Employment

Individuals holding F-2 status may not accept employment or engage in business under any circumstances. Employment, in this context, is defined as the rendering of services, part or full time, for financial or other compensation, including self-employment.

An important exception allowing employment has been made for certain persons from the People's Republic of China. If a dependent of a PRC student was in the United States on or before 11 April 1990, except for a brief, casual, and innocent departure, he or she may apply to INS for work authorization. [Executive Order 12711, 11 April 1990] Application should be made on Form I-765 without fee, with the F-2 dependent's Form I-94 attached. The applicant should claim eligibility by checking box "(a)(11)" of Group A on p. 3 of the Form I-765. [INS cable, 4 December 1989] It is not necessary to prove economic necessity. Employment authorization will be granted for the period ending 1 January 1994. [INS cable, 7 May 1990] The application results in issuance of an EAD, Form I-688B. [8 CFR 274a.12(a)(11), *Federal Register*, 23 August 1991, pp. 41786-87] As EAD application and issuance procedures vary by immigration district, the F-2 dependent is advised to inquire about local INS practices (see also Appendix 13).

4.14.5 Extension of stay

Dependents in F-2 status are permitted to stay in the United States only to the extent that the F-1 student has received an extension of stay. The F-2 dependents maintain their status through the timely compliance of the F-1 principal with requirements for transfer of schools, continuation in the United States either to begin a new program or complete an ongoing program, or for practical training following completion of studies. Those procedures that require an F-1 student to submit Form I-538 also collect information about the F-2 dependents' names, dates and places of birth, and passport expiration dates. F-2 dependents are required to keep their passports valid at least 6 months into the future.

Infrequently, F-2 dependents, traveling either alone or in the company of the F-1 student, may apply for entry to the United States but be unable to satisfy the immigration officer of their eligibility for duration of status. The inspector at the port of entry may issue a Form I-515 (see Section 4.4.3) or defer the inspection of the dependents (see Section 13.2.3). The INS endorse-

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ment of the Forms I-94 of such dependents will specify an expiration date, usually 15 or 30 days from the date of inspection. On these occasions, the F-2 dependents should comply in a timely manner with the requirements detailed at Sections 4.4.3 and 13.2.3. As the status of F-2 dependents derives from that of the F-1 student, the F-1 student's documents will also be required. Successful compliance with these procedures results in the period of stay for the dependents being extended for duration of status.

4.14.6 Visits abroad and reentry

An F-2 dependent leaving the United States temporarily must be certain to have the documents necessary to enter the country visited and to reenter the United States (see Section 4.11). As in the case of the F-1 principal, the F-2 dependent needs a valid passport (or travel document) and visa (unless exempt from passport and visa requirements—see Sections 2.2.4 and 2.3.2), and either a properly endorsed p. 4 of the student's current Form I-20A-B or a new Form I-20A-B, as described in Section 4.14.2. F-2 dependents are eligible for automatic extension of validity of visas on the same basis as F-1 students (see Section 4.11.2.2.3).

A special situation arises when the principal F-1 student travels outside the United States, leaving the F-2 dependent in this country. Since a dependent's stay in this country is valid only while the F-1 student maintains status here, it is not permissible for the dependent to remain in the United States while the F-1 student is absent from the country. However, when the F-1 student is absent from the country temporarily and for a short period of time, INS does not view the stay in the United States of F-2 dependent family members as being impermissible.

4.14.7 Change of status (nonimmigrant classification)

4.14.7.1 Change to F-2 status

A nonimmigrant alien may apply for a change to F-2 status if the spouse changes from another nonimmigrant classification to F-1, or if the alien becomes the spouse of an F-1 student. (For exceptions, see Section 4.12.1.) For both situations, the applicant must provide documentation proving financial support during the period of contemplated stay in the United States. In those instances when the dependent's spouse is changing to F-1 status, application for the change to F-2 status is included in the principal's application on Form I-539 with fee, and the dependent's Form I-94 is submitted along with that of the principal alien. In the case of marriage to an F-1 student, the nonimmigrant spouse (and children, if applicable) may apply for a change to F-2 status by submitting to INS the applicant's (or applicants') Form(s) I-94, the student's Form I-20 ID, proof of family relationship to the F-1 principal, financial documentation, a completed Form I-539, Application to Extend Status/Change Nonimmigrant Status, and the required fee (see Appendix 1).

A change of status from F-1 to F-2 also requires application on Form I-539 with fee. Applications must be filed with the original Form I-94 Arrival/Departure Record, the forms I-20ID of the principal alien and the applicant, proof of family relationship to the F-1 principal, evidence of financial capability, and information about passport validity. Applications should be filed with the local INS office in the applicant's area of residence.

Although regulations at 8 CFR 248.3(c)(5) state that neither an application nor the payment of a fee is required for changing from F-1 to F-2 status, the revised version of Form I-539 (rev. 2 December 1991) changes the application procedure. [INS cable, 27 May 1992]

4.14.7.2 Change from F-2 status

A nonimmigrant in F-2 status is eligible for a change to another nonimmigrant classification if able to meet all the requirements for the desired classification. The applicant must complete either Form I-539, Application to Extend Status/Change Nonimmigrant Status or Form I-129, Petition for Nonimmigrant Worker, as appropriate, and submit it to INS with the supporting documentation discussed in the instruction sheet attached to that form.

4.14.8 Departure or termination of status

A nonimmigrant holding F-2 status must terminate that status and depart from the United States "upon the termination of the status of the principal F-1 alien." [22 CFR 41.61(b)(3)]

SECTION 5

M Status: Students

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    5.14.3.1 Aliens subject to passport and visa requirements
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    5.14.7 Change of status
    5.14.7.1 Change to M-2 status
    5.14.7.2 Change from M-2 status
    5.14.8 Departure or termination of status

Forms and Documents Discussed in This Section

I-20M-N	Certificate of Eligibility for Nonimmigrant (M-1) Student Status—for Vocational Students
I-94	Arrival/Departure Record
I-20	ID Copy
I-515	Notice to Student or Exchange Visitor
I-538	Application by Nonimmigrant Student for Permission to Accept Employment
I-539	Application to Extend Status/Change Nonimmigrant Status
I-102	Application by Nonimmigrant Alien for Replacement of Arrival Document
M-242	Student and School Regulations

5.1 DEFINITION OF M STATUS

An M-1 visa and M-1 student status may be granted to an alien who seeks entry to the United States "for the purpose of pursuing a full course of study at an established vocational or other recognized nonacademic institution" authorized to enroll M-1 students. When applying for an M-1 visa, the individual must prove to a U.S. consular officer that he or she wishes to enter the United States temporarily and solely for the purpose of vocational study and that the alien has "a residence in a foreign country which he [or she] has no intention of abandoning." [Act 101(a)(15)(M)(i)] M-2 status is intended for spouses and dependents of M-1 students.

5.2 SCHOOL APPROVAL AND RESPONSIBILITIES

5.2.1 School approval

Before a school may enroll nonimmigrant M-1 students, it must secure approval from INS. A petition for approval is filed on Form I-17 (Petition for Approval of School for Attendance by Nonimmigrant Students) and Form I-17A (Designated School Officials). The petition is filed with the district director or officer-in-charge of the INS office having jurisdiction over the place in which the school or school system is located. The following schools are considered to be vocational or nonacademic institutions and may be approved for attendance by M-1 nonimmigrant students: (1) a community college or junior college that provides vocational or technical training and awards recognized associate degrees, (2) a vocational high school, and (3) a school that provides vocational or nonacademic training other than language training. [8 CFR 214.3(a)(2)(ii)] A school with appropriate programs may be approved to enroll both F-1 and M-1 students (see Section 3.2.1.1.3).

INS approval of a school for attendance by M-1 students is "valid only as long as the school continues to operate in the manner represented in the petition." [8 CFR 214.3(e)(2)]

5.2.2 School responsibilities

A school enrolling M-1 students must agree to comply with the record-keeping and reporting requirements presented in 8 CFR 214.3(g)(1) and (2). These requirements are discussed in Section 3.5. Failure to fulfill these responsibilities can result in withdrawal of school approval (see Section 3.6.1). [8 CFR 214.4]

5.3 ISSUANCE OF FORM I-20M-N TO M-1 STUDENTS

Federal regulations provide that an approved school may issue a Form I-20M-N to a foreign applicant accepted for enrollment in a full course of study only after the following conditions are met:

1. The prospective student has made a written application to the school.
2. The written application, the student's transcripts or other records of courses taken, proof of financial responsibility for the student, and other supporting documents have been received, reviewed, and evaluated at the school's location in the United States.
3. The appropriate school authority has determined that the prospective student's qualifications meet all standards for admission.
4. The official responsible for admission at the school has accepted the prospective student for enrollment in a full course of study (see Section 3.4.1). [8 CFR 214.3(k)]

The Form I-20M-N must be issued in the United States and signed by a designated school official (DSO). [8 CFR 214.3(k)] It may be issued only to "aliens who are … M-1 students or who are seeking … M-1 status."

Currently, two versions of the Form I-20M-N are in use. The older form consists of 8 pages and was issued 1 May 1983. A more streamlined version was issued on 3 May 1990 and consists of 4 pages. Since both forms are in circulation and accepted by INS, instructions on the proper use of both forms appears throughout this section. Until INS retires the older form, both are acceptable, although designated school officials (DSOs) will likely appreciate the relative simplicity of the May 1990 version.

For purposes of clarity, the complete Form I-20M-N/I-20 ID, which contains both a school and a student copy will be referred to throughout this section as the I-20M-N. The I-20 ID (Student) Copy will be referred to as the I-20 ID.

5.3.1 Students properly issued Form I-20M-N

When a school is approved to enroll both F-1 and M-1 students, the decision to document a foreign student as an M-1 student using Form I-20M-N should be made only after determining that the applicant intends to pursue a single, terminal vocational or technical program. A student whose "primary intent is to pursue vocational or technical training" must be documented as an M-1 student. [8 CFR 214.3(a)(2)(iii)] Students admitted to programs that can be considered prebaccalaureate or preprofessional should be documented as F-1 students with Forms I-20A-B, if the school's approval permits. When a school is approved to enroll both F-1 and M-1 students, the school's DSOs are responsible for determining whether individual applicants should be documented as F-1 or M-1 students. Schools may wish to design their admission applications so that applicants must specify if their primary intent for coming to the United States is to pursue "vocational or technical training" or to pursue "studies in liberal arts, fine arts, language, religion, or the professions"; the applicant's intent must be considered in determining whether F or M documentation is appropriate. [8 CFR 214.3(a)(2)(iii)] Upon admission to the United States, a student issued a Form I-20M-N must engage primarily in vocational or technical training, while a student issued a Form I-20A-B must engage primarily in studies in the liberal arts, fine arts, language, or religion, or in studies leading to the professions.

A student whose primary intent is to pursue vocational or technical training and who seeks admission for language training at the same school "solely for the purpose of being able to understand the vocational or technical course of study" must be documented on Form I-20M-N. [8 CFR 214.3(a)(2)(iv)]

5.3.2 Educational background

In considering a foreign applicant, the school should satisfy itself that the applicant has successfully completed a course of study equivalent to that normally required of a U.S.-educated applicant seeking admission to the school for the same vocational or technical program.

5.3.3 Language proficiency

The applicant should be adequately proficient in English to pursue the course of studies, or arrangements must be made to provide the prospective student with instruction in English.

Institutions may require the foreign applicant to take a standardized English proficiency test as a condition of admission. Such tests are administered at various centers in the United States and abroad. Proficiency in English need not be required if the institution in which the student will enroll conducts its courses in a language in which the alien is proficient or will enroll the applicant for a full course of study in English. [22 CFR

41.61(b)(iii)] If facilities exist at the school to provide full-time instruction in English, evidence of language proficiency can reasonably be obtained through testing upon arrival at the school to determine whether the student should be placed in English or in vocational or technical programs.

5.3.4 Financial verification

The school is required to obtain verification that the applicant has adequate funds to provide for expenses at the school without resorting to unauthorized employment. [8 CFR 214.3(k)(2) and 214.4(a)(1)(ix)] (M-1 students are not allowed to accept employment, except for practical training after completion of their course of study—see Section 5.7.2.) Funds may come from scholarships, fellowships, sponsoring agencies, the student's family, or any dependable source. The school should be satisfied that funds are guaranteed at least for the student's first year of study at the school and that, barring unforeseen circumstances, funding will be available from the same or equally dependable sources for subsequent years.

If the student is depending on funds from a source outside the United States, the school in which the foreign applicant plans to enroll is well advised to determine whether restrictions exist on the transfer of funds from the country in which they are held. In the event of such restrictions, the student should present evidence that they will not prevent the funds from being transferred, or the student may be required to make an advance deposit of part or all of a year's expenses. The Higher Education Reauthorization Act of 1986 (PL 99-498) permits such advance deposit requirements.

5.3.5 Full course of study

In issuing Form I-20M-N to a foreign applicant, the DSO certifies that the applicant is admitted to the institution for the purpose of enrolling in a full course of study that will lead to the attainment of a specific educational or vocational objective. A school may not issue a Form I-20M-N to anyone who is not expected to be engaged in a full course of study as defined in Section 5.6.2. [8 CFR 214.3(k)(4) and 214.4(a)(1)(x)]

5.4 OBTAINING A VISA AND ENTERING THE UNITED STATES

To enable an applicant to obtain an M-1 visa and/or enter the United States for the purpose of undertaking a full course of study as a vocational student, the DSO issues the student a properly executed Form I-20M-N. It is essential to keep in the school's records a copy of each Form I-20M-N issued.

The applicant must complete pages 2 and 7 of the Form I-20M-N (1 May 1983) or pages 1 and 3, item 11, Form I-20M-N/I-20 ID (rev. 3 May 1990). These pages state a number of conditions a student accepts when granted M-1 status. The DSO, as well as the applicant, should be thoroughly familiar with these conditions. The applicant should retain pages 3, 4, and 7 of the Form I-20M-N (1 May 1983) or pages 3 and 4 of Form I-20M-N/I-20 ID (rev. 3 May 1990) after entry into the United States.

Although an applicant may meet all the institution's admission requirements and seem eligible for an M-1 visa, it is the U.S. consular officer who decides whether the applicant will be granted a visa (see Section 2.3.4 and Section 4.4).

5.4.1 Aliens subject to passport and visa requirements

An alien who is required to have a valid passport and visa for entry to the United States (see Sections 2.2.4 and 2.3.2) applies for an M-1 visa at a U.S. consulate or embassy. In Taiwan, application is made at the American Institute in Taiwan. The applicant presents a valid passport and Form I-20M-N, with the required pages of the form completed (see Section 5.4). The consular officer may request other documents, such as proof of English-language proficiency and verification of financial support (see Section 2.3.3) to establish that the applicant meets all the requirements for M-1 status.

Schools are expected to make all possible efforts to ensure that the Forms I-20M-N they issue reach their intended recipients in time for the latter to acquire M-1 visas in the normal way. The *Foreign Affairs Manual* (FAM) does not permit a consular officer to issue B-2 prospective student visas for intending M-1 students under any circumstances. Thus, an intending M-1 nonimmigrant would not be eligible for a prospective student visa (see Section 5.12.1).

If the visa application is approved, a visa stamp is placed in the applicant's passport, noting the period of the visa's validity and the number of entries allowed (see Section 2.3.1). The Form I-20M-N is then returned to the applicant for use in applying for admission to the United States.

When the applicant arrives at the port of entry, he or she presents the passport (which must be valid for at least 6 months beyond the contemplated period of stay, unless the applicant is from a country with which the United States has entered into a passport agreement—see Section 2.2.4), visa, evidence of financial support, and the Form I-20M-N to the immigration official. If the person has previously been in the United States in F-1 or M-1 status and has been issued a Form I-20 ID, he or she presents that as well. Before admitting the applicant to the United States, the immigration official must be satisfied that the applicant is destined to and intends to attend the school specified in the visa. [8 CFR 214.2(m)(1)(i)(B)]

Upon admitting the student to the United States, the immigration officer issues the student a Form I-94 (Arrival/Departure Record), showing the date and place of entry, the alien's status as an M-1 student, the expiration date of that status, and an 11-digit admission number. The admitting immigration official also gives the student page 3 of the Form I-20M-N (1 May 1983), after marking it "I-20 ID (Student) Copy." Alternately, the official gives the student pages 3-4 of the Form I-20M-N (3 May 1990), which is already marked "I-20M-N (Student) Copy" (referred to herein as the I-20 ID; the yellow I-20 ID Copy is no longer used for M-1 students as of 1 August 1988). The admission number serves as the student's identification number in the INS's data base. By means of this data base, INS intends to keep track not just of the arrivals and departures of M-1 students, but of their fields of study, degree objectives, transfers of schools, and several other matters. M-1 students will submit their Forms I-20 ID with applications for many benefits, and the Form I-20 ID will become the record of INS decisions affecting their status in the United States.

The admission number is intended to be an alien's lifelong identifying number for study in F-1 or M-1 status. Students in M-1 status are required to keep the Form I-20 ID in their possession at all times and not to surrender it upon leaving the United States. [8 CFR 214.2(m)(2)] An exception to this is presumably permitted when the Form I-20 ID must be sent to INS in conjunction with an application.

The Form I-94 (Arrival/Departure Record), by contrast, is to be surrendered upon departure, except in the case of visits of 30 days or less to Canada, Mexico, or adjacent islands other than Cuba. When an M-1 student who has surrendered Form I-94 upon departure subsequently reenters the United States, the student is issued a new Form I-94, but not a new Form I-20 ID. The preprinted admission number on the new Form I-94 is stricken and replaced with the student's Form I-20 ID admission number. INS hopes that anyone who receives a Form I-20 ID will retain it as long as there is any possibility that he or she will seek to enter the United States in F-1 or M-1 status. An alien seeking admission to the United States in F-1 or M-1 status who has previously been in the United States as an F-1 or M-1 student but does not know his or her admission number may experience delays at the port of entry while INS searches its records for the number.

M-1 students are admitted to the United States until a specified date (see Section 5.5.1). The initial period of authorized stay will be noted on Form I-20 ID and Form I-94, and will never exceed 1 year. The Form I-94 in many cases will also indicate an additional 30 days within which the M-1 student is to depart the United States. [8 CFR 214.2(5)] The initial period of stay may be extended to allow completion of the original course of study (see Section 5.8). An M-1 student's permission to remain in the United States is not valid beyond the date shown on the student's Form I-20 ID and Form I-94, even though the Form I-20M-N may carry an expected date of completion of the program that is beyond that date.

Additional information about the use of Form I-20 ID appears throughout this section.

5.4.2 Aliens not subject to passport and visa requirements

Passport and visa requirements for entry to the United States do not pertain to certain aliens. The most important exceptions to the passport and visa requirements are Canadian citizens or landed immigrants of Canada having a common nationality with Canadians who are entering the United States from the Western Hemisphere, and citizens of the Republic of the Marshall Islands and the Federated States of Micronesia who have proceeded in direct and continuous transit from their country to the United States (see Section 2.2.4). [8 CFR 212.1] An alien in one of these categories applies directly to an immigration inspector at a port of entry for admission as an M-1 student. The procedure is otherwise the same as that followed by aliens subject to passport and visa requirements.

5.4.3 Temporary admission with Form I-515

If a prospective M-1 student appears at a port of entry and does not have a properly completed Form I-20M-N but otherwise appears eligible for admission as an M-1 student, the INS inspector can admit the student for a period of 30 days and give him or her a Form I-515 (Notice to Student or Exchange Visitor). That form instructs the alien to obtain a properly completed Form I-20M-N from the school the student is attending and send it, along with the Form I-20 ID (if the student has one), and the Form I-94, to the INS office with jurisdiction over the school. The district office may then grant the alien permission to stay for an appropriate period up to 1 year, noting the extension on the student's Form I-20 ID. [OI 8 CFR 214.2(m)(5)]

If the immigration inspector at the port of entry is unable to ascertain an applicant's eligibility for admission as an M-1 student, the inspector may parole the alien into the United States for "deferred inspection." When that happens, the alien is required to appear in person at the district INS office having jurisdiction over the school the student plans to attend (see Section 13.2.3).

5.5 AUTHORIZED STAY FOR M-1 STUDENT

An M-1 student will be admitted to the United States for a period not to exceed 1 year and may be granted extensions of stay in increments not exceeding 1 year. [8 CFR 214.2(m)(5) and 214.2(m)(10)]

5.5.1 General rule

An M-1 student is authorized to remain in the United States for the period of time necessary to complete the course of study indicated on Form I-20M-N plus 30 days within which to depart from the United States or to apply for change of status, or for 1 year, whichever is less. [8 CFR 214.2(m)(5)] M-1 students are not eligible for "duration of status" (see Section 4.4.1.3 for discussion of duration of status for F-1 students).

5.5.2 Single educational objective

"An M-1 student may not change educational objective." [8 CFR 214.2(m)(12)] M-1 students, unlike F-1 students, cannot change fields of study (also see Section 5.12.2.1 regarding prohibition against changing to F-1 status).

5.6 MAINTENANCE OF STATUS

5.6.1 General requirements

An alien admitted to the United States in M-1 status must meet certain obligations in order to maintain that status. The student must continue to carry a full course of study (see Section 5.6.2) at the school the student is authorized to attend. The student must not accept employment (see Section 5.7) and must keep his or her passport valid (see Section 2.2.4). The student must apply for an extension of stay if he or she wishes to remain in the United States beyond the period of time for which he or she was admitted. An M-1 student who wishes to transfer to another school must apply to INS for approval prior to making the transfer (see Section 5.9). An M-1 student who fails to maintain status may be deported from the United States.

5.6.2 Full course of study

A full course of study for an M-1 student must lead to attainment of a specific educational or vocational objective. A full course of study for an M-1 student is defined by the regulations as follows:

> (i) Study at a community college or junior college, certified by a school official to consist of at least 12 semester or quarter hours of instruction per academic term in those institutions using standard semester, trimester, or quarter-hour systems, where all students enrolled for a minimum of 12 semester or quarter hours are charged full-time tuition or considered full time for other administrative purposes, or its equivalent (as determined by the district director) except when the student needs a lesser course load to complete the course of study during the current term;
>
> (ii) Study at a postsecondary vocational or business school, other than in a language training program except as provided in 8 CFR 214.3(a)(2)(iv), which confers upon its graduates recognized associate or other degrees or has established that its credits have been and are accepted unconditionally by at least three institutions of higher learning within category (1) and (2) of 8 CFR 214.3(c), and which has been certified by a designated school official to consist of at least 12 hours of instruction a week, or its equivalent as determined by the district director;
>
> (iii) Study in a vocational or other nonacademic curriculum, other than in a language training program except as provided in 8 CFR 214.3(a)(2)(iv), certified by a designated school official to consist of at least 18 clock hours of attendance a week if the dominant part of the course of study consists of shop or laboratory work; or
>
> (iv) Study in a vocational or other nonacademic high school curriculum, certified by a DSO to consist of class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress towards graduation. [8 CFR 214.2(m)(9)]

5.6.3 Vacation period

An M-1 student attending an approved institution is allowed to take the summer as a vacation period and remain in status only if (1) the student has completed an academic year of studies prior to the summer vacation, (2) the student intends and is eligible to enroll at the same school during the term or semester immediately after the vacation, and (3) the summer vacation period at the school the M-1 student is enrolled in is normally observed as a vacation. [OI 8 CFR 214.2(m)(2)]

Although not explicitly stated in the regulations or the OIs, it is presumed that M-1 students may not use other semesters or terms as vacation if they wish to remain in the United States in M-1 classification during that vacation.

5.6.4 Special students

Although this paragraph is based on a previous version of the Operations Instructions, it presumably still represents INS's view of this situation. M-1 students may be admitted to an approved school for a program of study that will not result in the awarding of a degree or certificate, provided the course of study is full time and the student can "demonstrate that he or she has a specific educational objective." [OI 8 CFR 214.2(m)(2)] This interpretation of the requirement that M-1 students have a specific educational objective is intended to permit the lawful admission of "special students" who do not intend to complete the normal curriculum or a specific degree program. Previous OIs gave the example that a "community college may issue a Form I-20M-N to a special student who may become a degree candidate after making up certain academic deficiencies." Presumably, special students may also include students who wish to take refresher courses or a selection of classes that do not normally constitute a degree or certificate program. Special students must, however, pursue a full course of study and have an educational objective.

5.6.5 Disclosure of information; criminal activity

M-1 students, like all other nonimmigrants, are required to disclose fully and truthfully all information requested by INS regardless of whether the information is material. Failure to do so constitutes a violation of status. [8 CFR 214.1(f)] They are also required, as a condition of their admission, to obey all laws that prohibit the commission of crimes of violence. Conviction of a crime of violence for which a sentence of more than 1 year could be imposed, regardless of whether such a sentence is in fact imposed, constitutes a violation of status. [8 CFR 214.1(g)]

5.7 EMPLOYMENT

5.7.1 General prohibition

Employment means the rendering of services on either a part-time or full-time basis for compensation, financial or otherwise, including self-employment. An M-1 student may not accept employment or engage in business except for practical training, and then only after securing INS approval. The prohibition of employment for M-1 students applies to both on-campus and off-campus employment. [8 CFR 214.2(m)(13)]

5.7.2 Practical training

An M-1 student may be eligible to accept employment in order to obtain practical training upon completion of his or her studies. [8 CFR 214.2(m)(14)] Permission to engage in practical training is not automatically granted, and care must be exercised in the preparation of practical-training applications.

5.7.2.1 Limitations on training period

An M-1 student may be authorized to undertake practical training only upon completion of the course of study. INS permission to engage in practical training will be noted on the student's Form I-20 ID. The notation will include the dates on which permission begins and ends. No employment is permitted until the student is issued the Employment Authorization Document (EAD) by INS (see Section 5.7.2.3). The length of practical training granted to an M-1 student is dependent on a one-to-four ratio of training to study. The single period of practical training will be for a "period of time equal to 1 month for each 4 months during which the student pursued a full course of study, but not to exceed 6 months, plus an additional 30 days within which to depart from the United States." [8 CFR 214.2(m)(14)(iii)]

If the training sought by an M-1 student cannot be completed within the maximum training period for which he or she is eligible, permission for training may not be granted. A change to another nonimmigrant status is called for in these cases. That other nonimmigrant status may be H-1B (if the student was a member of the professions before the M-1 course of study), H-3 (for trainees at a lower or less-specialized level of education whose M-1 course of study is not necessary to qualify them for H-3 classification), or J-1 (if the graduate's prospective employer or other appropriate organization is the sponsor of an exchange-visitor program whose activities encompass the proposed training—see Sections 2.7 and 5.12).

M-1 students are not eligible for cooperative education or other forms of curricular practical-training programs. Employment prior to completion of the course of study is absolutely prohibited (see Section 5.7.1).

5.7.2.2 Qualifications

An M-1 applicant seeking permission for practical training must have completed a course of study. The training an applicant seeks must be related to the major field of study. In addition, the training sought must, in the opinion of a designated official of the school the student is leaving, be unavailable to the student in the student's country of residence. [8 CFR 214.2(m)(14)(ii) and 274a.12(c)(6)]

5.7.2.3 Application procedure

Application for practical-training permission is made on Form I-538. Please note that the application should be made on the new version of the Form I-538 (rev. 8 July 1991), which was mailed to all F- and M-authorized schools in the late fall of 1991. The student should complete section A of Form I-538 (8 July 1991).

The appropriate DSO should complete the section certifying the student's status, indicating that a period of practical training related to the student's course of study is recommended and that, upon information and belief, such training is unavailable to the student in the student's country of residence. Note that because the newer version of the Form I-538 does not request the DSO to state that the practical-training employment is unavailable in the student's home country, it is recommended that the DSO state on the reverse side of the form in the "Comments" section that to his or her knowledge and belief, such training is unavailable to the student in the student's country of residence. The newer form also requires that the school certify that the student has been in student status for 9 months before being qualified for practical training. This form is obviously designed for use with F-1 students, since M-1 vocational students have no 9-month-in-status rule as a prerequisite to practical training. It is suggested that the DSO check box A and alter the remaining sentence to read, "The student is eligible for the requested practical training in accordance with INS regulations at 8 CFR 214.2(m)." The DSO may wish to consult with or obtain a letter from the student's academic adviser endorsing the recommendation for practical training before signing the Form I-538 and may wish to submit a copy of that letter along with the application.

DSOs recommend practical training by notifying the INS student data processing center in London, Kentucky, submitting the completed Form I-538 directly to the center. The endorsement for practical training on the reverse side of the Form I-20M-N (Student) Copy should read as follows: "Practical training is recommended in the field of (student's field of study) beginning (date of completion of course of study)." See below for the procedure to obtain work authorization.

It is not necessary for the student to have a job offer at the time the application for M-1 practical training is filed, as long as the school has recommended a period of practical training.

The student has permission to engage in employment for practical training only if and when the student receives the Form I-20 ID Copy endorsed to that effect and has applied for and been issued an EAD. [8 CFR 214.2(m)(14)(ii) and (iii)] This subsequent step of filing for an EAD was recently added to the regulations (effective 1 October 1991). The student must apply in person to the INS office having jurisdiction over the student's place of residence using Form I-765 (a fee is required—see Appendix 1). The student's Form I-20 ID must be endorsed for practical training.

An M-1 student with permission for practical training may be issued a new Form I-20M-N for the purpose of reentering the United States after a temporary absence. Time spent abroad is charged against the student's maximum practical training time. [8 CFR 214.2(m)(14)(iv)]

It is also important to note that recent changes in F-1 regulations require that F-1 students granted practical training after completion of a course of study may leave and reenter the United States if they have in their possession an endorsed Form I-20 ID recommending practical training and an unexpired EAD (see Section 4.9.3.3). It would be wise for an M-1 student who plans to travel abroad during the period of his or her practical training to follow the same procedure, although at this writing no such regulatory requirement exists.

5.7.2.4 Work required in a regularly prescribed curriculum

An M-1 student may not accept employment except as practical training after completion of the course of study. An M-1 student may not accept employment in a cooperative education program, a study-related position, or in any other capacity other than as a practical trainee after completing the course of study.

5.7.2.5 Social Security coverage

Contributions for Social Security should not be withheld from wages of nonimmigrant M-1 aliens if the employment is authorized as practical training. Further information may be found in the Social Security Administration publication, "Social Security Coverage for Foreign Students and Exchange Visitors," available from any Social Security office (see Appendix 8 and Appendix 12). The student should show this booklet to any employer who may not be familiar with this exemption.

5.7.2.6 Income tax obligations

Information on an M-1 student's tax obligations may be found in IRS publications 515, "Withholding on Nonresident Aliens and Foreign Corporations," and 519, "U.S. Tax Guide for Aliens" (see Appendix 8). Earnings from practical-training employment will generally be subject to federal and state income taxes (unless a tax treaty provides exemption).

5.8 EXTENSION OF STAY

An M-1 student must keep valid his or her permission to stay in the United States, as noted on the Form I-20 ID. Since all M-1 students are admitted to the United States for a specific period of time, they must apply to INS for extension of stay if they wish to remain beyond that time.

Extensions will be made using form I-539 (1 September 1989), or its revision. If a student applying for an extension of stay is seeking a school transfer, the Form I-20M-N for the new school must accompany the application (see Section 5.9 for limitations on school transfers). Current regulations do not allow an M student to transfer using the notification procedure in place for F students.

An extension of stay is processed by submitting Form I-539, the required fee (see Appendix 1), the student's Form I-20 ID, the Form I-20M-N (if applicable), and the Forms I-94 of dependents, if any, to the INS office having jurisdiction over the student's current school, not less than 15 or more than 60 days before the student's authorized stay expires. The student should not send his Form I-94 or passport to INS. (The passport expiration date is indicated on the Form I-539.) Form I-20 ID, endorsed to show INS approval or denial of the application, is returned to the student. Extensions given an M-1 student will not be noted on Form I-94 but on Form I-20 ID. [8 CFR 214.2(m)(10)]

Generally, an M-1 student seeking an extension of stay who is the beneficiary of an approved immigrant visa petition or of an approved labor certification will not be granted the extension. Although the existence of an approved immigrant visa petition or labor certification is not certain grounds for denial of an extension of stay, it is usually difficult for the alien to convince an INS officer that he or she intends to return home after completion of the anticipated program of study. [OI 8 CFR 214.2(m)(7)] If the application for extension is granted, the student and the student's dependents, if any, will receive extensions of stay for the period of time necessary to complete the course of study, plus 30 days within which to depart from the United States or to apply for change of status, or for 1 year, whichever is less. [8 CFR 214.2(m)(10)]

An M-1 student who has been compelled by illness to interrupt or reduce a course of study may be granted an extension of stay without being required to change nonimmigrant classification, if it can be established that the student will pursue a full course of study upon recovery from the illness. [8 CFR 214.2(m)(10)(iii)]

While the application for extension of stay is pending, the M-1 student is considered to be legally in the United States as long as the student has met and continues to meet all the requirements for maintaining his or her status.

Occasionally, a student will find it necessary to leave the United States before INS returns the Form I-20 ID. The adviser may want to issue a letter to the student certifying the student's academic status and issue a duplicate Form I-20M-N that includes the student's admission number. The lack of a Form I-20 ID will not prevent the student's departure from the United States, although it may prevent his or her entry into Canada or Mexico (see Section 5.11.1).

5.9 Transfer of Schools

5.9.1 Conditions for transfer

An M-1 student may not transfer schools after 6 months in M-1 status, unless the student is unable to remain at the school to which he or she was initially admitted "due to circumstances beyond the student's control." Otherwise, an M-1 student may be granted permission to transfer schools if the student

(A) Is a bona fide nonimmigrant;

(B) Has been pursuing a full course of study at the school the student was last authorized to attend;

(C) Intends to pursue a full course of study at the school to which the student intends to transfer; and

(D) Is financially able to attend the school to which the student intends to transfer. [8 CFR 214.2(m)(11)(i)]

The regulations do not specify a minimum period of full-time enrollment at the originally authorized school, although it is clear that the student must have been enrolled for at least some period of time. If the student has not enrolled at all, the student must apply for reinstatement to M-1 status (see Section 5.10) for the purpose of attending the new school.

5.9.2 Procedure

An M-1 student must apply for permission to transfer between schools on Form I-539 accompanied by the student's Form I-20 ID and the Forms I-94 of the student's spouse and children, if applicable. The Form I-539 and required fee (see Appendix 1) must also be accompanied by Form I-20M-N, properly and completely filled out by the student and by the DSO of the school which the student wishes to attend. The student must submit the application for school transfer to the INS office having jurisdiction over the school the student was last authorized to attend. Sixty days after having filed an application for school transfer, an M-1 student may effect the transfer, subject to approval or denial of the application. An M-1 student who transfers without complying with this regulation or whose application is denied after transfer pursuant to this regulation is considered to be out of status. If the application is approved, the approval of the transfer will be retroactive to the date of filing the application, and the student will be granted an extension of stay for the period of time necessary to complete the course of study indicated on Form I-20M-N plus 30 days within which to depart from the United States or for 1 year, whichever is less. [8 CFR 214.2(m)(11)(ii)]

The regulatory provisions concerning school transfer appear to cause a problem for an M-1 student who wishes to transfer schools but who cannot, for lack of required documentation or for some other reason, apply for permission to transfer at least 60 days in advance of the opening of classes at the new school. If the student can apply at least 60 days in advance, the student can enroll in the new school, even though there has not yet been a reply to the application. But if the student must enroll in the new school before 60 days have passed after submitting the application for transfer, and if the student has not yet received a response to the transfer application, the student would be in violation of the regulations in 8 CFR 214.2(m)(11)(ii). The student would also be considered out of status if he or she does not continue in school. To alleviate this potential problem, INS has directed its officers to approve transfer applications if the only reason for denying the application would be that the student effected the transfer without permission prior to the 60-day waiting period and did so due to circumstances beyond his or her control. An application for transfer submitted less than 60 days before the transfer is to be effected should be accompanied by a letter from a designated official of the new school the student will be attending "explaining in detail why the application could not have been submitted earlier." [OI 8 CFR 214.2(m)(8)(ii)]

INS will note approval of the school transfer and the name of the new school on Form I-20 ID and will return the form to the student.

5.9.3 Failure to attend authorized school

If an M-1 student who has not been pursuing a full course of study at the school the student was last authorized to attend desires to attend a different school, the student must apply for reinstatement to student status (see Section 5.10). [8 CFR 214.2(m)(11)(iii)] INS will approve an application for reinstatement to M-1 status only if the student provides extraordinary justification for the failure to attend the school he or she was last authorized to attend. The regulations do not specify a minimum period of full-time enrollment at the originally authorized school, although it is clear that the student must have been enrolled at the last school for at least some period of time. If the student has not enrolled at all, the student must apply for reinstatement to M-1 status (see Section 5.10) for the purpose of attending the new school.

An M-1 student who has been granted a school transfer but decides to remain at the old school may do so without violating his or her nonimmigrant status if the designated official at the old school submits the following documents to the INS office having jurisdiction over that school: "(i) a current Form I-20M-N; [and] (ii) a letter of explanation signed by the designated school official." If the student is not, and has not otherwise been, in violation of his or her status, INS will adjust its files to reflect the nontransfer. No fee is required for this request. [OI 8 CFR 214.2(m)(9)]

5.10 REINSTATEMENT TO STUDENT STATUS

An M-1 student who has overstayed the authorized period of stay granted by INS, or who has otherwise failed to maintain M-1 student status (see Section 5.6), may be reinstated, at the discretion of the district director, to lawful M-1 student status only if

(A) The student establishes to the satisfaction of the district director that the violation of status resulted from circumstances beyond the student's control or that failure to receive reinstatement to lawful M-1 status would result in extreme hardship to the student;

(B) The student makes a written request for reinstatement accompanied by a properly completed Form I-20M-N from the school the student is attending or intends to attend and the student's Form I-20 ID;

(C) The student is currently pursuing, or intending to pursue, a full course of study at the school which issued the Form I-20M-N;

(D) The student has not been employed without authorization; and

(E) The student is not deportable on any ground other than section 241(a)(2) [overstay] or (9) [failure to maintain status] of the Act. [8 CFR 214.2(m)(16)(i)]

The application for reinstatement should include the following: Form I-539, required fee (see Appendix 1), written request for reinstatement, properly completed Form I-20M-N, and the student's Form I-20 ID. This information should be submitted to the INS office having jurisdiction over the school which the student wishes to attend, in other words, the school that issued the Form I-20M-N submitted with the application.

If INS reinstates the student, the student will receive his or her Form I-20 ID so noted and the school will receive Form I-20N so noted. This applies if the older version of Form I-20M-N (1 May 1983) is used. Otherwise, the student will be notified on page 3-4 of the Form I-20 (rev. 3 May 1990) Student Copy. If INS decides not to reinstate the student, the student may not appeal the decision. However, the student may file a motion for reconsideration of the decision (see Sections 13.3 and 13.3.2.3).

5.11 VISITS ABROAD AND REENTRY

Whenever an M-1 student wishes to leave the United States temporarily and return to continue his or her studies, the student must carry appropriate documentation to permit entry to another country and reentry to the United States. The reentry documentation will generally include a new Form I-20M-N or page 3-4 of the student's last Form I-20M-N, endorsed by the DSO within the previous 6 months, and a valid passport and visa (unless the student is not subject to the passport and visa requirements).

5.11.1 Entry into another country

An M-1 student who wishes to visit temporarily his or her country of citizenship or permanent residence will be allowed to enter that country if the student holds a valid passport or other travel document issued by that country. Specific visa requirements for entry to other countries should be obtained directly from the appropriate embassy or consulate in the United States.

An M-1 student who wishes to visit Canada must have the following documents in his or her possession: (1) a valid passport; (2) a currently endorsed page 3-4 of Form I-20M-N or a recently issued Form I-20M-N; (3) a valid Form I-94; (4) evidence of return transportation arrangements; (5) sufficient funds for the contemplated visit to Canada; and (6) at certain border-crossing stations, a letter from the foreign student adviser confirming that the holder is a full-time student at the school.

In addition, an M-1 student who is not a citizen or a national of a country whose citizens or nationals are exempt from the Canadian visitor-visa requirement will need a Canadian visitor visa. A list of exemptions from the Canadian visitor-visa requirement appears in Appendix 10. It is advisable to apply for the Canadian visa at least 2 weeks before the anticipated date of travel. The application must be accompanied by the documentation enumerated above, plus a fee.

5.11.2 Requirements for reentry into the United States

An M-1 student must have the following documents in order to reenter the United States after a temporary absence to resume attendance at the same school: (1) a valid passport and a valid visa (unless exempt from passport and visa requirements—see Sections 2.2.4 and 2.3.2), and (2) a properly endorsed page 4 of Form I-20M-N or a new Form I-20M-N if there have been substantive changes in the information on the Form I-20M-N issued earlier.

If reentry is for the purpose of beginning attendance at a new school, the visa may be amended by a consular officer to show the name of the new school. Consular officers will make notations on existing visas for a new school upon a request supported by a Form I-20M-N from the new school and evidence of continued financial ability and nonimmigrant intent. If the M-1 student does not have a notation of the new school on the M-1 visa, INS may admit the student for attendance at the new school provided that

1. the student presents a Form I-20M-N from the school the student intends to attend;

2. the student presents documentary evidence of financial ability to attend the school that issued the Form I-20M-N; and

3. the student establishes that failure to have the school that the student intends to attend specified on his or her visa resulted from circumstances beyond the student's control, or that failure to be admitted would result in extreme hardship to the student. [OI 8 CFR 214.2(m)(4)] It is not possible to reissue an M-1 visa inside the United States.

An M-1 student whose visa has expired and who needs a new visa to reenter the United States after a temporary absence must apply for the new visa at a U.S. embassy or consulate. Although it is possible for an alien to obtain a new M-1 visa in a foreign country other than the student's own, the alien may face more stringent requirements than if the student were in his or her own country. In addition to proving eligibility for an M-1 visa, the student may have to convince the consular officer that there is a legitimate reason for making the visa application outside the student's own country. In many instances the consular officer in the third country will find it necessary to check with the U.S. consulate or embassy in the student's place of residence. This can be time consuming. Further, if information is requested by cable rather than diplomatic mail in order to save time, cable charges will be assessed against the visa applicant.

The documents needed for a new visa are a valid passport, a current photograph, a properly endorsed page 3-4 of Form I-20M-N or a recently issued Form I-20M-N, and proof of financial capability for continuing studies.

5.11.3 Automatic extension of validity of visas

An expired M-1 visa may be considered to be automatically extended to the date of application for readmission to the United States (and therefore the visa in the passport need not have a current expiration date) provided the M-1 student

1. is applying for readmission to the United States after an absence not exceeding 30 days solely in contiguous territory;

2. has maintained and intends to resume his or her status as an M-1 student and is reentering the United States prior to the expiration of the previously authorized stay;

3. presents either a currently valid page 3-4 of Form I-20M-N or a new Form I-20M-N issued by the school he or she is authorized to attend that contains the expiration date of the previously authorized stay;

4. is in possession of a valid passport;

5. presents an unexpired Form I-94; and

6. does not require the authorization of temporary admission to the United States under Section 212(d)(3) of the Act (a provision for waiver of inadmissibility—see Section 13.5.1). [22 CFR 41.112(d)]

Furthermore, a person who entered the United States in a classification other than M-1 student, but whose status was subsequently changed to M-1 student, may be considered to have the previous visa automatically extended and converted to an M-1 visa if the student meets the conditions stated above.

Thus, under these circumstances, an M-1 student whose visa has expired may not have to apply for a new visa at a consular post outside the United States. In order to prevent delays at the port of entry, it may be wise to mention in a letter carried by the student that the student is eligible for automatic revalidation (or conversion) of visa under 22 CFR 41.112(d).

5.12 CHANGE OF STATUS

5.12.1 Change to M-1 student status

An alien in any nonimmigrant status except C, D, K, and, in some cases, J may apply for a change to M-1 status if the alien has maintained lawful nonimmigrant status up to the time the application is filed. Application is made on Form I-539 (Application to Extend Status/Change Nonimmigrant Status). The Form I-539 must be accompanied by a properly executed Form I-20M-N from the admitting institution. The applicant must complete pages 2 and 7 on Form I-20M-N (1 May 1983) or pages 1 and 3 on Form I-20M-N/I-20 ID Copy (rev. 3 May 1990); the applicant's Form I-94; evidence of financial support; and the required fee (see Appendix 1).

INS cannot approve a change to M-1 status if the applicant "intends to pursue the course of study solely in order to qualify for a subsequent change" to H temporary-worker status. [8 CFR 248.1(c)]

A nonimmigrant B-2 visitor for pleasure may wish to change to M-1 student status under various sets of circumstances:

1. The student entered the United States in B-2 status and after arriving here decided to attend school. The student is admitted to a school and obtains a Form I-20M-N after arriving in the United States.

2. The student believed while outside the United States that he or she would encounter difficulty in securing an M-1 visa from a consular officer, got a B-2 visa instead, and entered the United States intending to apply to change to M-1 status here.

Individuals in the first category may be able to change to M-1 status, although they may have difficulty convincing INS of their good faith. The adviser should caution such individuals that their applications may be denied. Individuals in this category should be instructed to provide INS with whatever information or evidence is available to support their contention that they are entitled to a change to M-1 status.

Those in the second category will be denied a change of status and may be found to be in violation of Section 212(a)(6) of the Act regarding misrepresentation in applications for immigration benefits. In most cases, an alien who is denied a change of nonimmigrant classification will be given a voluntary departure date approximately 30 days after the date of the INS decision (see Section 13.3.2.5).

Although OIs allow for the possibility of an intending M-1 student's receiving a B-2 prospective student visa if the student plans to enter the country more than 90 days before the reporting date on Form I-20M-N [OI 248.7(d)], Department of State guidelines in the *Foreign Affairs Manual* do not allow for such a visa to be issued to intending M-1 students under any circumstances.

A change of status from M-2 to M-1 requires neither a formal application nor the payment of a fee. The request must be accompanied by the applicant's Form I-94; a properly executed Form I-20M-N; evidence of financial capability; and information about passport validity. The applicant must submit a letter to the INS office having jurisdiction over the student's place of temporary residence in the United States requesting the change of nonimmigrant classification. [8 CFR 248.3(c)(9)]

5.12.2 Change from M-1 student status

Except in specific cases having to do with change to H status or F-1 status (see below), an M-1 student may apply for a change to any other nonimmigrant status for which he or she is eligible. Changes to a nonimmigrant status that requires the filing of the Form I-129 (Petition for Nonimmigrant Worker) do not require the use of the Form I-539, whereas changes to other nonimmigrant categories require the filing of the Form I-539 (Application to Extend/Change Nonimmigrant Status) and the submission of the supporting documentation described in the instruction sheet attached to that form.

An M-1 student must apply for any change of status while the student's authorized stay is valid; that is, no later than 30 days after the completion of the course of study or period of authorized practical training.

5.12.2.1 Change from M-1 to F-1

An alien in M-1 status may not change to F-1 status. [8 CFR 248.1(c)] However, if a student was erroneously issued an M-1 visa or admitted in M-1 status, a change of status may be granted, according to a previous version of the OIs. The intending F-1 student must submit to the INS office having jurisdiction over the school the student was last authorized to attend the following documents:

1. Form I-20A-B (with all student certification sections completed);
2. evidence of finances;
3. Form I-94;
4. a letter from a designated official of the school the student was last authorized to attend explaining the reason(s) the designated official believes that the student's nonimmigrant classification should be changed to that of an F-1 student.

An INS official is most likely to approve a request for change of status under these circumstances when the error in classification resulted from an incorrectly issued M-1 visa. It is unlikely that a change to F-1 status would be granted solely because the M-1 student changed his or her educational objective before enrolling in school, given the regulatory prohibition against changes in educational objective. [8 CFR 214.2(m)(12)]

A person classified M-2 may change to F-1 status if qualified.

5.12.2.2 Change from M-1 to H

Regarding change from M-1 to H status, INS will "deny an application for change of nonimmigrant classification from that of an M-1 student to that of an alien temporary worker under Section 101(a)(15)(H) of the Act if the education or training which the student received while an M-1 student enables the student to meet the qualifications for temporary-worker classification under Section 101(a)(15)(H) of the Act." [8 CFR 248.1(d)]

If an M-1 student possessed the necessary qualifications for the H-1, H-2, or H-3 status prior to the current course of study, then such a change of status may be granted. Also, H-4 dependent status may be granted to a spouse or minor child of an H-1, H-2, or H-3 alien (see Section 10). Application is made on Form I-129 (Petition for Nonimmigrant Worker) with accompanying documentation, required fee (see Appendix 1) and the Form I-94. It is recommended that previous Forms I-20M-N and I-20 ID be included in the application to verify the validity of the applicant's M-1 status at the time of the application.

5.12.2.3 Change from M-1 to J-1

INS will deny an application for change from M to J (exchange-visitor) status if it appears that the change is desired primarily to enable the applicant's dependents to apply for permission to accept employment. An exception may be made, at the discretion of the INS district director, if the change in status will make the applicant subject to the 2-year foreign-residence requirement of Section 212(e) of the Act.

5.12.2.4 Change from M-1 to M-2

A change of status from M-1 to M-2 requires neither a formal application nor the payment of a fee. The applicant must submit a letter requesting the change of status to the INS office having jurisdiction over the place of temporary residence in the United States. [8 CFR 248.3(a)] The request must be accompanied by (1) the Form I-94 of the applicant, (2) the Forms I-20 ID (Student) Copy of the principal alien and the applicant, (3) proof of family relationship to the M-1 student, and (4) information about passport validity.

5.12.3 Reentry to obtain new status

An M-1 student may sometimes obtain a new nonimmigrant status by leaving the United States and reentering with a new visa. If the student can be issued a visa for reentry in the desired status, reentry can make it possible to obtain a new nonimmigrant status when it is not possible to change to that new status in the United States.

5.13 DEPARTURE UPON TERMINATION OF STATUS

An M-1 student has 30 days to depart from the United States after completion of the course of study and authorized practical training, if any. [8 CFR 214.2(m)(5)] INS may grant an additional period of less than 30 days when needed to effect departure because of "conditions beyond an alien's control or other special circumstances." [8 CFR 214.1(c)(5)] An M-1 student seeking this extra 30 days must present his or her Form I-94, Form I-20 ID, passport, and an informal request to the INS office having jurisdiction over the student's place of temporary residence in the United States. If approved, the new date is called a "satisfactory departure date." The procedure is not considered an extension of stay.

5.13.1 Sailing Permit (Certificate of Compliance)

An M-1 student who has earned taxable income is no longer required to file for a certificate of compliance with U.S. income tax laws before departing the United States. The regulations are effective 28 January 1991. [*Federal Register*, 28 January 1991, pp. 3034-35]

5.13.2 Surrender of documents

An M-1 student departing from the United States (to places other than Canada or Mexico for 30 days or less) must surrender his or her Form I-94 to (1) a representative of the carrier providing transportation out of the United States at the time of boarding, (2) a Canadian immigration officer at the United States–Canada border, or (3) a U.S. immigration officer at the United States–Mexico border. An M-1 student should not surrender the Form I-20 ID upon departure. It is to be retained for any subsequent entry to the United States as an F-1 or M-1 student.

5.13.3 Institutional reporting responsibilities

Institutional reporting responsibilities regarding an M-1 student who terminates attendance at a school are discussed in Section 3.5.3.

5.14 SPOUSE/DEPENDENT (M-2) STATUS

5.14.1 Eligibility

The spouse and unmarried minor children of an M-1 student may accompany the student to the United States or follow to join the student at a later date. They will be accorded M-2 status provided they establish to the satisfaction of the consular officer and an immigration officer at the port of entry that (1) they have sufficient funds to cover their expenses, or other arrangements have been made to provide for their expenses; and (2) they intend in good faith and will be able to depart from the United States "upon the termination of the status of the principal alien." [22 CFR 41.61(b)(3)]

5.14.2 Entry documentation for M-2 dependents

If the dependent spouse and unmarried minor children accompany the student to the United States, the Form I-20M-N that the student submits to the consular officer with the application for an M-1 visa (see Sections 5.3 and 5.4) may be used to request M-2 visas and entry in M-2 status for the spouse and unmarried minor children. If the dependents follow to join the student, they will need to submit to the consular official either page 4 of Form I-20M-N (Student) Copy with a current endorsement or a new Form I-20M-N completed for use by spouse and/or children in acquiring M-2 classification. If a new Form I-20M-N is issued, it is not required to state the names of the dependents on the face of the form, but it is considered good practice to state them in the "Remarks" section.

5.14.3 Obtaining a visa and entering the United States

5.14.3.1 Aliens subject to passport and visa requirements

An M-1 student's spouse and unmarried minor children who are required to have valid passports and visas for entry to the United States (see Sections 2.2.4 and 2.3.2) must apply for M-2 visas at a U.S. consulate or embassy abroad. The applicant must present the consular officer with either a page 4 of Form I-20M-N (Student) Copy validated within 6 months or a new Form I-20M-N completed in the name of the M-1 principal, and such other documents as may be required to demonstrate eligibility for M-2 status (see Section 2.3).

If the visa application is approved, the form will be returned to the applicant for use in applying for admission to the United States. When the dependent arrives at the port of entry, he or she presents the passport and the form to the immigration inspector. Upon admitting the alien to the United States, the inspector issues the alien a Form I-94, showing the date and place of entry, classification, and authorized period of stay. The period will coincide with that of the M-1 principal.

5.14.3.2 Aliens not subject to passport and visa requirements

The M-1 student's spouse and unmarried minor children who are not subject to passport and visa requirements (see Sections 2.2.4 and 2.3.2) and who wish to enter the United States in M-2 status may apply directly to an immigration inspector at a port of entry. The procedure is otherwise the same as that followed by aliens required to meet passport and visa requirements.

5.14.4 Employment

Individuals holding M-2 status may not accept employment or engage in business under any circumstances. Employment, in this context, is defined as the rendering of services, part time or full time, for financial or other compensation, including self-employment.

5.14.5 Extension of stay

Application for extension of stay for an M-2 spouse and minor children is included in the M-1 student's application for extension of stay. Information about the M-2 dependents' names, dates of birth, and passport expiration dates is entered on the Form I-539 (see Section 5.8), which is submitted to INS along with the Form I-20 ID of the M-1 principal and the Forms I-94 of all M-2 dependents. The periods of stay for principal and dependents will be extended to the same date.

Occasionally, when an M-2 dependent arrives in the United States at a date later than the M-1 student, the M-2 dependent's Form I-94 will reflect an earlier or a later date of expiration of stay than does the Form I-20 ID Copy of the M-1 student. When the M-2 dependent's period of stay ends before that of the M-1 principal, the Form I-20 ID of the M-1 student and Form I-94 of the M-2 dependent can be sent to INS along with information concerning the validity of the dependent's passport and a letter requesting that the M-2 dependent's period of stay be extended to coincide with that of the M-1 student. When the M-2 dependent's period of stay ends later than that of the M-1 principal, the M-2 dependent applies for an extension of stay along with the M-1 student, as described in the preceding paragraph.

5.14.6 Visits abroad and reentry

An M-2 dependent leaving the United States temporarily must be certain to have the documents necessary to enter the country visited and to reenter the United States (see Section 5.11). As in the case of the M-1 principal, the M-2 dependent needs a valid passport and visa (unless exempt from passport and visa requirements—see Sections 2.2.4 and 2.3.2) and either a currently endorsed Form I-20M-N (Student) Copy or a new Form I-20M-N (each in the name of the M-1 student). M-2 dependents are eligible for automatic extension of validity of visas on the same basis as M-1 students (see Section 5.11.3).

A special situation arises when the principal M-1 student travels outside the United States, leaving the M-2 dependent in the United States. Since the dependent's stay in this country is valid only while the M-1 student maintains status here, it is not legitimate for the dependent to remain in the United States while the M-1 student is absent from the country for any significant period of time.

5.14.7 Change of status

5.14.7.1 Change to M-2 status

A nonimmigrant alien may apply for a change to M-2 status if the spouse changes from another nonimmigrant classification to M-1, or if the alien becomes the spouse of an alien in M-1 status. For both situations, the applicant must provide verification that he or she has sufficient financial support for the contemplated stay in the United States.

In those instances when the dependent's spouse is changing to M-1 status, application for the change to M-2 status is included in the principal's application, and the dependent's Form I-94 is submitted along with that of the principal alien. In the case of marriage to an M-1 student, the nonimmigrant spouse (and children, if applicable) may apply for a change to M-2 status by submitting to INS the Forms I-94 of the applicant(s), the Form I-20 ID of the principal M-1 student, evidence of family relationship (e.g., a marriage certificate), a completed Form I-539 (Application to Extend Status/Change Nonimmigrant Status), and the required fee (see Appendix 1).

No formal application or fee is required for a change of nonimmigrant status from M-1 to M-2 or vice versa. To change from M-1 to M-2 status, the applicant should submit to INS a letter requesting reclassification, the M-1 principal's Form I-20 ID, the applicant's Form I-94 and Form I-20 ID, proof of family relation to the M-1 principal, and information about passport validity. A letter from the applicant requesting the change of status is required by the regulations. [8 CFR 248.3(c)]

5.14.7.2 Change from M-2 status

A nonimmigrant in M-2 status is eligible for a change to another nonimmigrant classification if the alien can meet all the requirements for the desired classification. The applicant must complete Form I-539 (Application to Extend Status/Change Nonimmigrant Status) and submit it to INS along with his or her Form I-94, the required fee (see Appendix 1), and the other materials specified on the instruction sheet attached to the Form I-539. No formal application or fee is required for change from M-2 to M-1 status.

5.14.8 Departure or termination of status

A nonimmigrant holding M-2 status must terminate that status and depart from the United States "upon the termination of the status of the principal alien." [22 CFR 41.61(b)(3)] The M-2 nonimmigrant will surrender his or her Form I-94 at the time of departure.

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SECTION 6

O Status: Persons of Extraordinary Ability

Jerry Wilcox

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I-539	Application to Extend Status/Change Nonimmigrant Status
I-797	Notice of Action
I-94	Arrival/Departure Record
I-9	Employment Eligibility Verification

6.1 GENERAL INFORMATION AND DEFINITIONS

The O visa was created by Congress in the Immigration Act of 1990 [Act 101(a)(15)(O)] and amended by the Miscellaneous and Technical Immigration Amendments of 1991 (MTINA) [PL 102-232]. Within the O visa, three categories were created. The O-1 includes aliens of extraordinary ability in the sciences, arts, education and athletics, plus aliens of extraordinary achievement in the motion picture and television industries. The O-2 applies only to an accompanying alien who assists in the artistic or athletic performance of an O-1. The O-3 is for the accompanying spouse and dependents of O-1 aliens.

Extraordinary ability must have been demonstrated through sustained national or international acclaim. [Act 101 (a)(15)(O)]

The focus of this section is on individuals with extraordinary ability in the sciences, education, and business, since it is more probable that individuals in these occupations would be the beneficiaries of college or university petitions. As mentioned above, the law also provides for aliens of extraordinary ability in arts and athletics and extraordinary achievement in the motion picture and television industry. [8 CFR 214.2(o)] This chapter does not discuss these occupations but may be revised to include them once the regulations are final. Also note that artists and athletes may enter the United States temporarily in the P classification (see Section 7, P Status: Artists, Athletes, and Entertainers).

A successful petition for O status must establish the fact that the applicant has demonstrated extraordinary ability and must include a written consultation from a peer group in the area of the alien's expertise. Petitions are filed on Form I-129 (Petition for a Nonimmigrant Worker) and the O-classification supplement to the I-129. As in the case of an H-1B temporary worker, the employer is responsible for the reasonable costs of return transportation to the last place of residence prior to the alien's entry to the United States for an O visa holder whose employment is terminated for reasons other than voluntary resignation. O visas are valid for up to 3 years, with 1-year incremental extensions allowed to continue the same work. The total time allowed to stay in the United States is the duration of the "event" for which the visa is granted. Thus there is no absolute limit on the time an O-1 can stay in the United States. The O category applies to individuals, not groups.

O-visa status requires considerable documentation and appears to be best reserved for the most highly qualified guest professors, researchers, and artists.

Extraordinary ability in the sciences, education, or business means a level of expertise indicating that the individual is one of the small percentage who have risen to the very top of their field of endeavor. [8 CFR 214.2(o)(3)(ii)]

Event means an activity such as, but not limited to, a scientific project, conference, convention, lecture series, tour, exhibit, academic year, or other engagement. Such activity could include short vacations, promotional appearances, and stopovers incidental or related to the event. A group of related activities will also be considered an event. [8 CFR 214.2(o)(3)(ii)]

Peer group means a group or organization composed of and governed by practitioners of the alien's occupation who are of similar standing with the alien. If there is a collective bargaining representative of the employer's employees in the occupational classification for which the alien is being sought, such a representative may be considered the appropriate peer group for purposes of consultation. [8 CFR 214.2(o)(3)(ii)]

6.2 PETITION PROCESS FOR O-1 ALIENS

The O application process is similar to the H-1B Temporary Worker application process. The qualified employer files a petition on Form I-129 (Petition for a Nonimmigrant Worker), sending it, the O-classification supplement form, and the applicable fee to the INS service center that has jurisdiction over the place where the alien of extraordinary ability will work. The application may not be filed more than 6 months before the need for the alien's services. [8 CFR 214.2(o)(2)(i)] INS determines if the alien proposed to enter the United States to participate in the event is qualified. The application must be accompanied by (1) a written consultation from a peer group in the alien's area of ability; (2) a copy of any written contract between the employer and the alien or a summary of the oral agreement under which the alien will be employed; (3) copies of evidence related to the services the alien will perform; and (4) evidence that the alien has received a major, internationally recognized award or at least three qualifications from a list of examples. In addition, as mentioned earlier in this section, an employer is responsible for reasonable costs of return transportation to the last place of residence prior to the alien's entry to the United States if the employment is terminated early for reasons other than voluntary departure. [8 CFR 214.2(o)(17)] The application process is outlined below.

6.2.1 Standards for establishing need for alien of extraordinary ability

The position for which an O alien is being considered must meet one of the following criteria to establish that it requires someone of extraordinary ability:

(A) The position or services to be performed involve an event or activity which has a distinguished reputation or is a comparable newly organized event or activity;

(B) The services to be performed are in a lead or critical role in an activity for an organization or establishment that has a distinguished reputation or record of employing extraordinary persons;

(C) The services primarily involve a specific scientific or educational project, conference, convention, lecture, or exhibit sponsored by bona fide scientific or educational organization or establishments; or

(D) The services consist of a specific business project that is appropriate for an extraordinary executive, manager, or highly technical person due to the complexity of the business project. [8 CFR 214.2(o)(3)(iii)]

6.2.2 Standards for O-1 aliens of extraordinary ability

The petitioner can prove that the alien has demonstrated extraordinary ability in science, education, business, or athletics through sustained national or international acclaim either by submitting evidence that the alien has received a major, internationally recognized award such as the Nobel Prize [8 CFR 214.2(o)(3)(iv)(A)] or by submitting documentation of at least three of the following:

1. a nationally or internationally recognized award or prize for excellence in their field

2. membership in associations in the field for which the classification is sought, which require for membership outstanding achievement, as judged by national or international experts in their disciplines or fields

3. published material in professional or major trade publications or other media about the alien and related to the alien's work in the field for which the classification is sought. This should include the title, date, and author of the published material and any translation if necessary.

4. evidence of the alien's participation on a panel or individually as a judge of the work of others in the same or an allied field of specialization for which the classification is sought (e.g., judging Nobel Prizes)

5. evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field

6. evidence of the alien's authorship of scholarly articles in the field in professional journals or the major media (e.g., publication in *Lancet*, if the alien is an M.D.)

7. evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation

8. evidence that the alien has commanded a high salary or other significantly high remuneration for services in relation to others in the field, as proven by contracts or other evidence. [8 CFR 214.2(o)(3)(iv)(B)]

If the above list does not easily apply to the alien's occupation, other comparable evidence may be submitted by the petitioner to establish the alien's extraordinary ability. [8 CFR 214.2(o)(3)(iv)(C)]

6.2.3 Consultation requirements and advisory opinions

The petition for an O-1 alien of extraordinary ability must include written evidence of consultation with an appropriate peer group in the area of the alien's responsibility regarding the nature of the work to be done by the alien and his or her qualifications. This must be accomplished by submitting the written advisory opinion from the appropriate peer group (which may include a labor organization) with the petition at the time the petition is filed with the service center. [8 CFR 214.2(o)(5)(i)]

The written consultation from a peer group that accompanies the petition must describe the alien's ability and achievements in the field, specify the duties to be performed, and state whether the position requires the services of someone of extraordinary ability. The regulation further states that "the written opinion shall contain a statement of facts which support the conclusion reached in the [consultant's] opinion." [8 CFR 214.2(o)(5)(ii)]

The Service has listed groups that have agreed to provide advisory opinions and published these in Operation Instructions 214.2(h), usually available only in law libraries or INS offices. Additional organizations or groups may provide advisory opinions, since the Service admits its list is not exhaustive. [8 CFR 214.2(o)(5)(v)] A Department of Justice memo of 20 September 1991 added several organizations prepared to provide opinions for psychiatrists, computer professionals, nutritionists, public accountants, management accountants, and psychologists.

If a peer group exists and is willing to provide a written advisory opinion, such an opinion should be submitted with the petition. In cases where it is established by the petitioner that an appropriate peer group does not exist, INS will render a decision on the evidence of record. [8 CFR 214.2(o)(5)(i)(G)] For academic positions, if no appropriate peer group exists, the petitioner may include letters of attestation from qualified experts in support of the claim of extraordinary ability.

6.2.4 Documentary requirements

The petition must include the following four documentary elements:

1. affidavits, contracts, awards, or other documentation that demonstrate the nature of the alien's achieve-

ments, completed by the person in charge of the place where the work was performed

2. affidavits written by present or former employees or recognized experts certifying to the recognition and extraordinary ability of the alien and describing specifically the alien's recognition or ability in factual terms. Persons so attesting must also describe their own expertise and how they know of the ability of the alien mentioned in the O-1 petition.

3. copies of any contracts between the petitioner and the alien to be employed or a summary of the terms of the agreement under which the alien will be employed

4. an explanation of the nature of the activity of the alien and its beginning and ending dates, and a copy of any itinerary for the event or activity. [8 CFR 214.2(o)(6)]

6.2.5 Filing of the petition

The petition—including Form I-129, the O-classification supplement, and other required documentary evidence—should be submitted to the INS service center having jurisdiction over the place where the alien will work. Legible photocopies of documents may be submitted in support of the petition. Original documents may be requested by INS. The application may not be filed more than 6 months before the work is to begin. [8 CFR 214.2(o)(2)(i)]

6.2.6 Services in more than one location

A petition that requires the alien to work in more than one location must include an itinerary with the dates and locations of the work. The petition is filed with the INS service center that has jurisdiction over the area where the petitioner is located. [8 CFR 214.2(o)(2)(ii)(A)]

6.2.7 Services for more than one employer

If an alien will work for more than one employer concurrently, each employer must file a separate application with the INS service center having jurisdiction over the area where the work will take place. The exception is when an agent is filing the petition. [8 CFR 214.2(o)(2)(ii)(B)]

6.2.8 Approval and validity of petition

The employer is notified of the approval of the petition on Form I-797, Notice of Action. This notice includes the alien's name and the period of validity of the petition. [8 CFR 214.2(o)(7)(i)]

An approved new petition for the O-1 alien will be valid for a time period not to exceed 3 years. [8 CFR 214.2(o)(7)(iii)(A)] Note the following three instances that determine the starting and ending dates of the petition:

1. If the new O petition is approved before the date on which the petitioner says the services will begin, the approval notice will show the actual dates requested by the petitioner.

2. If the new O petition is approved after the date the petitioner indicated the services were to begin, the beginning date will be the date of approval and the ending date will be that requested by the petitioner.

3. If the length of time requested by the employer exceeds 3 years, the petition shall only be approved up to the 3-year limit. [8 CFR 214.2(o)(6)]

6.2.9 Denial of petition

If the application is to be denied based on information of which the petitioner is unaware, the INS service center will notify the petitioner of the intent to deny and the basis for denial. The employer may review and rebut the evidence within 30 days of the notice of intent to deny the application. [8 CFR 214.2(o)(8)] The petitioner is notified of the reasons for denial and of the right to appeal. Also note the following regulation: "If a petition is denied because of the advisory opinion provided by a peer group, labor, and/or management organization, a copy of the advisory opinion shall be attached to the director's decision." [8 CFR 214.2(o)(5)(D)]

6.3 EXTENSION OF STAY

An employer may file for an extension of stay for an alien of extraordinary ability to complete the activity described in the original petition. Supporting documents are not required unless requested by the INS service center. The application must be filed on Form I-129 and the O-classification supplement before the expiration of the original petition.

Accompanying the Form I-129 must be a statement explaining the reasons for the extension, a request to extend the petition, and the dates of the requested extension. The alien for whom the extension is requested must be physically present in the United States at the time the extension of stay is filed. If the alien must leave the United States while the extension request is being considered, the INS service center may cable approval of the extension to a consular office abroad where the alien will apply for the visa. [8 CFR 214.2(o)(13)]

The maximum extension that can be requested at any one time is 1 year, solely for the purpose of permitting the alien to continue or complete the activity described in the original petition. Ten days is added to the extension date requested by the petitioner. [8 CFR 214.2 (o)(13)(ii)]

"There is no absolute time limit on the O-1's total stay in the United States." [*Federal Register*, 2 December 1991, p. 61116, Commentary on 214.2(o)(7)(iii)(A)]

The fact that an O-1 petitioner may hold an approved labor certification or may have filed a preference petition shall not be a basis for denying a petition for extension of stay, entry to the United States, or change of status. An O nonimmigrant may leave and reenter the United States while seeking to become a permanent resident. [8 CFR 214.2(o)(14)]

6.4 CHANGE OF EMPLOYERS

If an O-1 alien seeks to change employers in the United States, the new employer must file a petition with the INS service center having jurisdiction over the place of employment. [8 CFR 214.2(o)(2)(ii)(C)]

6.5 OBTAINING A VISA AND ENTERING THE UNITED STATES

To obtain an O visa and enter the United States for the purpose of engaging in employment on the basis of an approved petition to work as an alien of extraordinary ability, the foreign national should report to the consulate indicated in the original application the prospective employer filed with the regional INS service center. The applicant must apply at the U.S. consulate named on Department of State Form OF-156, presenting a valid passport and Form I-797 (Notice of Action) indicating approval of the O petition.

Although an applicant may meet the requirements to work as an alien of extraordinary ability and appear eligible for an O visa, it is the U.S. consular officer who will decide whether the applicant will be granted the visa (see Sections 2.3.2 and 2.3.3). It is important to note, however, that the concept of dual intent applies to O-1 aliens, who may enter the United States, extend their status, or change to another nonimmigrant status even if they have indicated their intent to become immigrants to the United States. The concept of dual intent will likely benefit some foreign nationals who may qualify to work at U.S. colleges and universities, yet who need to maintain an active international travel schedule while in O-1 status. [8 CFR 214.2(o)(14)]

6.5.1 Aliens subject to passport and visa requirements

An alien required to have a valid passport and visa for entry to the United States (see Sections 2.3.2 and 2.3.3) applies for an O visa at a U.S. consulate or embassy. In Taiwan, application is made at the American Institute in Taiwan. The applicant presents a valid passport and Form I-797, the Notice of Action authorizing employment as an alien of extraordinary ability.

If the visa application is approved, a visa stamp is placed in the applicant's passport, noting the period of the visa's validity and the number of entries allowed (see Section 2.3). The Form I-797 is then returned to the applicant for use in applying for admission to the United States.

When the applicant arrives at the port of entry, he or she presents the passport (which must be valid for at least 6 months beyond the contemplated period of stay, unless the applicant is from a country with which the United States has entered into a passport agreement—see Section 2.2.4), visa, and Form I-797 to the immigration official.

Upon admitting the alien of extraordinary ability to the United States, the immigration officer issues a Form I-94 (Arrival/Departure Record), showing the date and place of entry, the alien's status as an O alien of extraordinary ability, and the expiration date of that status. [8 CFR 214.2(o)(11)]

The Form I-94 is to be surrendered upon departure, except in the case of visits of 30 days or less to Canada or Mexico. When an alien in O status has surrendered Form I-94 upon departure and subsequently reenters the United States, he or she is issued a new Form I-94.

Aliens of extraordinary ability are admitted to the United States until a specified date. The period of authorized stay will be noted on Form I-797. The initial period of stay may be extended (see Section 6.3). An O-1 alien has permission to remain in the United States until the date shown on the Form I-94, which, as noted above, includes 10 additional days. Note that the O-1 alien is only allowed to work during the validity of the petition, which will not match the dates on the Form I-94. The Form I-797 states the actual employment dates.

6.5.2 Aliens not subject to passport and visa requirements

Passport and visa requirements for entry to the United States do not pertain to certain aliens. The most important exceptions to the passport and visa requirements are Canadian citizens or landed immigrants of Canada having a common nationality with Canadians who are entering the United States from the Western Hemisphere, and citizens of the Republic of the Marshall Islands and the Federated States of Micronesia who have proceeded in direct and continuous transit from their country to the United States (see Section 2.2.4). [8 CFR 212.1] An alien in one of these categories applies directly to an immigration inspector at a port of entry for admission as an alien of extraordinary ability. The procedure is otherwise the same as that followed by aliens subject to passport and visa requirements.

6.6 AUTHORIZED STAY

An alien of extraordinary ability will be admitted to the United States for the period of the approved petition as noted on the Form I-797, not to exceed 3 years for new petitions, plus an additional 10 days. [8 CFR 214.2 (o)(7)(iii) and (11)] Extensions of stay are possible (see Section 6.3).

6.7 MAINTENANCE OF STATUS

An alien admitted in O status is only authorized to work with a specific employer as approved by INS. Any employment not authorized in direct connection with the approved petition is in violation of O status.

6.8 EMPLOYMENT

An alien of extraordinary ability is authorized to work only for the specific employer approved by INS in the original petition. No other employment is authorized. Because the employment is specific to a particular employer, no Employment Authorization Document is required; however, an employer is obligated to complete Form I-9, Employment Eligibility Verification (see Section 13.10). Note that employment with the petitioner is limited to the dates on Form I-797, Notice of Action.

6.9 TAX OBLIGATIONS

6.9.1 Social Security

Contributions for Social Security are to be withheld by employers. Unlike F-1, M-1, and J-1 aliens, O visa holders are not exempt from Social Security tax.

6.9.2 Income tax

Information on an O-1 alien's tax obligations may be found in IRS publications 515, "Withholding on Nonresident Aliens and Foreign Corporations," and 519, "U.S. Tax Guide for Aliens" (see Appendix 12).

6.10 VISITS ABROAD AND REENTRY

Whenever an alien in O-1 status wishes to leave the United States temporarily and return to continue his or her approved employment, he or she must carry appropriate documentation to permit entry to another country and reentry to the United States. The reentry documentation will generally include Form I-797 and a valid passport and visa (unless the alien is not subject to the passport and visa requirements).

6.11 AUTOMATIC EXTENSION OF VALIDITY OF VISAS

An expired O visa may be considered to be automatically reissued to the date of application for readmission to the United States (and therefore the visa in the passport need not have a current expiration date) provided the O-1 alien of extraordinary ability

1. is applying for readmission to the United States after an absence not exceeding 30 days solely in contiguous territory;
2. has maintained and intends to resume his or her status as an O-1 alien and is reentering the United States prior to the expiration of the previously authorized stay;
3. presents a Form I-797 that contains the dates of the previously authorized stay;
4. is in possession of a valid passport; and
5. presents an unexpired Form I-94.

Furthermore, a person who entered the United States in a classification other than O, but whose status was subsequently changed to O, may be considered to have the previous visa automatically reissued and converted to an O visa if he or she meets the conditions stated above. [22 CFR 41.112(d)]

6.12 CHANGE OF STATUS

6.12.1 Change to O status

An alien in any nonimmigrant status except C, D, K, and, in some cases, J may apply for a change to O status if the alien has maintained lawful nonimmigrant status up to the time the application is filed. Application is made on Form I-129, Petition for Nonimmigrant Worker (see Section 6.2).

6.12.2 Change to another nonimmigrant status

An O alien may apply to change to another nonimmigrant status for which he or she is eligible by completing Form I-539 or Form I-129 and the supporting documentation described in the instruction sheets attached to each form.

6.12.3 Reentry to obtain new status

An O-1 alien may obtain a new nonimmigrant status by leaving the United States, obtaining a new visa at a U.S. consular post abroad, and reentering with a new visa and supporting documentation.

6.13 DEPARTURE UPON TERMINATION OF STATUS

An alien of extraordinary ability has 10 days to depart the United States after completion of the authorized program. [8 CFR 214.2 (o)(11)]

6.14 SURRENDER OF DOCUMENTS

An O-1 alien departing from the United States (to places other than Canada or Mexico for 30 days or less) must surrender his or her Form I-94 to (1) a representative of the carrier providing transportation out of the United States at the time of boarding, (2) a Canadian immigration officer at the United States–Canada border, or (3) a U.S. immigration officer at the United States–Mexico border.

6.15 SPOUSE/DEPENDENT (O-3) STATUS

The spouse and dependents (unmarried minor children) of O-1 aliens are given O-3 classification. They are subject to the same limitations of stay as the O-1 alien. No employment is permitted to spouse or dependents in O-3 status. [8 CFR 214.2(o)(7)(iv)]

6.16 DIFFERENCES FROM J, P, AND H STATUS

6.16.1 Differences from J status

The commonly used exchange-visitor category of research scholar/specialist is quite likely to be applied to aliens who might qualify for O-1 status. In fact, unless the length of time required to complete the employment were significantly longer than 3 to 5 years, exchange-visitor status would be preferable because of its simplicity. Its only drawback, if the alien were from a country with which the United States had a critical-skills agreement, would be the 2-year home country residence requirement. (Payment of the alien's salary from a U.S. source might subject the alien to the same requirement.)

6.16.2 Differences from P status

The P visa (see Section 7) was created by the 1990 Act. The P visa category has three subsets: P-1 status is intended for "internationally recognized" artists and athletes; P-2 is reserved for artists and entertainers who are part of a "reciprocal exchange" program between organizations in the United States and organizations abroad; and the P-3 category is reserved for artists and entertainers who perform as part of a "culturally unique" program.

Some overlap is evident, as artists and athletes are mentioned in both the O and P visa legislation. The advantages and disadvantages of the P and O categories are unclear. However, some of the main differences are:

Athletes. O-1 athletes are individuals of *sustained* national or international acclaim. P-1 athletes must be internationally recognized but need only demonstrate such recognition one time. The initial O-1 petition may be for up to 3 years with extensions in 1-year increments. The initial P-1 petition is for 5 years with extensions up to a total stay of 10 years.

Artists and entertainers. O-1 artists are admitted as individuals. P-1 artists are admitted as a group, although a member of a P-1 group may petition for an O-1 based on his or her own merits. Furthermore, INS can waive the consultation requirement if the O-1 artist is seeking readmission to perform similar services within 2 years of the date of a previous consultation.

6.16.3 Differences from H-1B status

One important advantage of the O-1 over the H-1B visa is its lack of time limit. In addition, the new regulations for the H-1B stipulate that the employer must meet certain wage and working condition requirements. These requirements are absent from the O-1 provisions.

SECTION 7

P Status: Artists, Athletes, and Entertainers

Lorig S. Boyajian

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Forms and Documents Discussed in This Section

I-129	Petition for Nonimmigrant Worker
I-797	Notice of Action

7.1 DEFINITION OF P STATUS

The P visa classification was created by Congress in the Immigration Act of 1990 (PL 101-649) and further refined in the 1991 technical amendments to the Act. [Act 101(a)(15)(P)] The P classifications are used for the temporary services of an alien as an athlete, as a part of an athletic team, as an artist, or as part of a performance group. Generally, the alien must be internationally recognized or acclaimed. The regulations define international recognition as having a "high level of achievement in a field as evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well-known in more than one country." [8 CFR 214.2(p)(3)] The Act describes four P classifications:

1. The P-1 alien is one who is coming to the United States to perform services as an internationally recognized athlete, or as part of such an athletic team, or as a member of an internationally recognized entertainment group (not as an individual performing artist).
2. The P-2 alien is one who is coming to perform services as an artist or entertainer under a reciprocal exchange program.
3. The P-3 alien is one who is coming solely to perform, teach, or coach under a program that is culturally unique.
4. The P-4 alien is the spouse or minor child of a P alien, if he or she accompanies or follows to join a P-1, P-2, or P-3 alien. [Act 101(a)(15)(P); 8 CFR 214.2(p)]

Additionally, those individuals who are not artists, performers, or athletes but are considered essential support personnel (in that they are integral to the performance of a P-1, P-2, or P-3 alien and their services cannot be readily performed by a U.S. worker), are classifiable as P aliens in the same visa category as the principal alien(s). [8 CFR 214.2(p)(3)]

P nonimmigrants must possess an unrelinquished residence abroad that they have no intent of abandoning.

7.2 FILING A P PETITION

A petition for any P classification is filed on Form I-129 by the employer or sponsor, such as an agent, who requires the services of an alien on a temporary basis. Only a P-1 petition can be filed by a foreign employer. The petition must be submitted in duplicate, along with supporting documents specified for each P classification, to the INS service center having jurisdiction over the place in which the alien is to be employed. If the petition requires the alien to work in more than one location, the petition is filed with the service center having jurisdiction over the area where the petitioner is located or the place of the first engagement. INS will notify the petitioner on Form I-797 (Notice of Action) upon approval of a petition.

Sometimes the employer is the petitioner, and it is expected that the alien will receive a salary or other compensation from the petitioner and not from any other employer in the United States. If the alien is to be employed by more than one employer, each employer must submit a separate petition. Sometimes an agent is the petitioner and is performing the function of an employer. In this case, the agent must provide an itinerary of definite employment and specify the wage offered and other terms and conditions of employment.

7.3 P-1 STATUS

P-1 status is reserved for (1) an athlete who is internationally recognized on his or her own reputation and achievements as an individual—such as a tennis star, gymnast, or star soccer player—and will be performing services in the United States at an event that requires an internationally recognized athlete, such as a distinguished athletic competition; (2) an athletic team which is to perform at a specific athletic competition at an internationally recognized level of performance; (3) members of an entertainment group that is internationally recognized as outstanding for a substantial and sustained period of time and who have had a sustained relationship with the group, usually for at least 1 year, and are integral to the group's functioning. The 1-year requirement may be waived in rare instances, such as for circus personnel, or illness. Further, certain nationally recognized groups may be able to obtain a waiver of the international-recognition requirement in consideration of "special circumstances," such as limited access to news media. Please see 8 CFR 214.2(p)(4) for documentary requirements to establish international recognition for a P-1 alien athlete, athletic team, or performance group.

P-1 petitions for athletes are valid for a period of up to 5 years; for athletic teams and entertainment groups petitions shall be valid for the period of time to complete the competition, performance, or event, not to exceed 1 year.

An advisory opinion by a labor organization that has expertise in the area of the alien's sport or entertainment field is required in a P-1 petition. The opinion must evaluate or describe the alien's or group's ability and achievement, comment on whether the alien or group is internationally recognized, and state whether the services to be performed are appropriate for an internationally recognized athlete or entertainment group.

An academic institution will seldom, if ever, have a need to file a P-1 petition on behalf of an alien or group of aliens. Should a foreign entertainment group of high caliber perform on campus and be paid by the institution, it is probable that an agent will be the petitioner and that the institution's name and address will be attached to the group's itinerary supporting the I-129 petition for P status.

7.4 P-2 STATUS

This classification is accorded to artists and entertainers, individually or as a group, who will be performing under a reciprocal-exchange program between an organization in the United States and another organization abroad. The agreement must provide for the temporary exchange of artists and entertainers, and the exchange must display parity in the caliber of aliens, the terms of employment, and the numbers of artists and entertainers involved. Among other things, an advisory opinion must be attached to the petition by an appropriate labor organization in the United States that was involved in negotiating, or has concurred with, the reciprocal exchange.

P-2 petitions are valid for a period necessary to complete the event, activity, or performance, not to exceed 1 year.

7.5 P-3 STATUS

Artists or entertainers recognized individually or as a group by governmental agencies, cultural organizations, scholars, arts administrators, critics, or other experts in a particular field for their excellence in developing, interpreting, representing, coaching, or teaching a unique or traditional ethnic, culinary, cultural, musical, theatrical, or artistic performance or presentation are eligible for P-3 status, as long as they are coming to the United States for cultural events to further the understanding or development of their art form. They must be sponsored by an educational, cultural, or governmental organization that promotes such activities and/or exchanges. The performance itself may be commercial.

A petition to classify an alien or a group as a P-3 alien must be accompanied by two of the following:

1. Documentation evidencing the alien's or group's previous experience in culturally unique events for a substantial period of time;

2. Documentation evidencing that the alien or group has achieved national or international recognition;

3. Documentation that the alien or group has received recognition for achievements from organizations, critics, governmental or cultural agencies or other recognized experts in the field.

The petition must also include testimonials by recognized experts attesting to the authenticity and excellence of the culturally unique skills and an advisory opinion by a labor organization. The advisory opinion must evaluate the cultural uniqueness of the alien's skills, state whether the events are mostly cultural in nature and state whether the event or activity is appropriate for P-3 classification. [8 CFR 214.2(p)(6)(G)(iii)]

7.6 CONSULTATION WITH A LABOR ORGANIZATION

Consultation with an appropriate labor organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for a P-1 or P-3 classification can be approved. All aliens, including essential support personnel, who are part of the petition must be included in a written advisory opinion. A consultation is also mandatory for P-2 essential support personnel. (See Section 7.4 for P-2 principals.) In those cases where the employer can show that there is not an appropriate labor organization, the petition can be approved without it. If the petitioner does not provide a consultation, the Service will forward a copy of the petition to the labor organization and await a reply, thus delaying adjudication of the petition and perhaps entailing a negative opinion. Clearly it is to a petitioner's advantage to obtain the advisory opinion prior to filing a P petition. Although the advisory opinion is just that—advisory—it is too early to say whether the Service will render a decision on the basis of the opinion alone. If the petition is to be denied based on information of which the petitioner is unaware, the Service will give the petitioner 30 days to rebut the evidence it is using to make its decision. The Service will then render a decision on the basis of the additional evidence presented.

7.7 MAINTENANCE OF STATUS

A temporary worker in P-1, P-2, or P-3 status may be employed only by and according to the conditions of the petitioner through whom status was obtained. P-4 aliens may not be employed.

A beneficiary of a P visa may be admitted to the United States 10 days before the validity of the visa begins and up to 10 days after the validity period ends. An extension or change of status, however, must be filed only if the validity of the petition has not expired. [8 CFR 214.2(p)(12) and (13)]

7.8 EXTENSION OF STAY

A P-1 individual athlete may be initially admitted for the length of the event, not to exceed 5 years. Extensions of stay may be authorized for a period of up to 5 more years, not to exceed a total stay of 10 years. Other P aliens may be admitted for a period equal to the length of the event or performance, not to exceed 1 year. Extension of status may be granted for up to 1 year at a time to continue to complete the activity for which they were admitted. [8 CFR 214.2(p)(8)(iii) and (14)(ii)]

7.9 P AND O STATUS COMPARED

The P visa is used for athletes and performers who are coming to the United States to participate in a specific athletic event or performance. Although the athletic performance or event can be an entire season or group of related activities, the P visa is not intended to be used for employment other than for this one purpose. O visa holders are authorized to perform services in almost any activity requiring their distinguished talent,.

With regard to entertainers, P visa holders are members of a performance group and are coming to the United States as a group. O visa holders are individual performers coming to the United States by virtue of their individual recognition.

The P visa was designed to allow a wider variety of performers into the United States than the O. Unfortunately, the interim regulations implementing the Act have failed to accommodate this intent. It is anticipated that the final regulations implementing the Act will further refine the differences between these visa classifications.

7.10 P-3 AND Q STATUS COMPARED

The Q visa is for corporations and businesses that require the temporary services of an individual who will be sharing his or her culture with the American public. There is a low burden of qualification for an alien to be eligible for such classification. On the other hand, P-3 status is reserved for an individual or group that is recognized by experts for their excellence in teaching, interpreting, or developing a unique or traditional cultural presentation or performance and is coming to the United States for cultural events to further the development of their art form. P-3 aliens must be petitioned by an educational, cultural, or governmental organization.

The Q visa is valid for 15 months and the P-3 is valid for the length of the activity, initially not to exceed 1 year. The P-3 may be extended in increments of 1 year to continue or complete the activity for which admission was granted.

SECTION 8

Q Status: International Cultural Exchange Visitors

Jerry Wilcox

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I-129	Petition for Nonimmigrant Worker
I-539	Application to Extend Status/Change Nonimmigrant Status
I-797	Notice of Action
I-94	Arrival/Departure Record
OF-156	Nonimmigrant Visa Application
I-9	Employment Eligibility Verification Form

8.1 GENERAL INFORMATION AND DEFINITIONS

The Q visa category was created by Congress in the Immigration Act of 1990. [Act 101(a)(15)(Q)] The program allows a qualified employer to petition the Immigration and Naturalization Service (INS) for approval to bring in an alien for a period not to exceed 15 months to engage in prearranged employment or training and to share his or her own culture with Americans. The purpose of the international cultural exchange programs for which the Q visa was designed is to enhance the American people's knowledge and appreciation of different world cultures. [8 CFR 214 Interim Rule, *Federal Register*, 22 August 1991, p. 41623] An international cultural exchange program involving Q-visa holders must involve structured public activities with specific culture-sharing goals; the employment aspect of the program must be ancillary to the cultural objectives.

The most common example of an employer mentioned in the discussions of this status is Disney World's Epcot Center in Florida. Examples of qualified nonimmigrant employees often mentioned are Chinese acrobats and members of Bavarian Oktoberfest bands. Discussions with an official at INS headquarters confirmed that a language instructor who included cultural training in the classroom would be another appropriate example.

"International cultural exchange visitor" or "participant" means an alien having a residence in a foreign country that he or she has no intention of abandoning, who is coming temporarily to the United States to take part in an international cultural exchange program approved by the attorney general. [8 CFR 214.2(q)(1)]

"Qualified employer" means a U.S. or foreign firm, corporation, or other legal business that administers an international cultural exchange program designated by the attorney general. [8 CFR 214.2(q)(1)]

"Petitioner" means the employer or its designated agent (one employed by the qualified employer on a permanent basis in an executive or managerial capacity for the preceding 12 months). [8 CFR 214.2(q)(1)]

8.2 PETITION PROCESS

The Q application process is similar to the H-1B temporary-worker application process. It has two parts. INS will determine during the application process if the intending employer is qualified to administer an international cultural exchange program. If that determination is positive, INS will decided whether the alien proposed to enter the United States to participate in the international cultural exchange program is qualified. The application process is outlined below.

The qualified employer files a petition on Form I-129, Petition for a Nonimmigrant Worker—plus a supplement to the Form I-129 for the Q classification and the applicable fee—with the INS service center that has jurisdiction over the place where the international cultural exchange visitor will perform the service or labor or receive training. The employer petitions concurrently (on the Form I-129 and Q supplement) for approval of the international cultural exchange program and the international cultural exchange visitor. The petition for Q nonimmigrant workers is considered only if the employer's concurrent petition for the international cultural exchange program is approved. [8 CFR 214 Interim Rule, *Federal Register*, 22 August 1991, p. 41623]

A U.S. or foreign employer may file the petition, but a foreign employer's petition must be signed by a U.S. citizen or permanent resident who has been employed by the qualified foreign employer on a permanent basis in an executive, managerial, or supervisory capacity for the prior year.

8.2.1 Program length

Each petition for an international cultural exchange program may be approved for the duration of the program, which may not exceed 15 months. A new petition must be filed each time the qualified employer wants to bring in additional international cultural exchange visitors. [8 CFR 241.2(q)(3)(ii)]

8.2.2 Location of program activity

The culture-sharing activity must take place in a school, museum, business, or other establishment where the public is exposed to aspects of a foreign culture as part of a structured program. [8 CFR 214.2(q)(3)(iii)(A)] (Also see Section 8.2.9 on service, labor, or training in more than one location.) Note that a private home is not listed as an appropriate primary location of program activity.

8.2.3 Cultural component

The international cultural exchange program must have a cultural component that is essential and integral to the alien's employment or training. The program must exhibit or explain the attitude, customs, history, heritage, philosophy, or traditions of the alien's home country. Acceptable cultural components of the program are structured instructional activities such as courses or lecture series that improve Americans' knowledge of the visitor's home country's arts, literature, history, language, or traditions. [8 CFR 214.2(q)(3)(iii)(B)]

To this end, the petitioner must demonstrate that the cultural component of the program is an essential and integral part of the service performed or training received. Proper documentation such as catalogs, brochures, or other types of material must be submitted to demonstrate that:

1. the cultural component is designed to give an overview of the attitudes, customs, history, heritage, philosophy, tradition, or other cultural attributes of the participant's home country
2. the cultural component is an essential and integral part of the participant's training or employment
3. the participant's training or employment takes place in a public setting where the sharing can be achieved through his or her direct contact with Americans
4. the American public will derive an obvious cultural benefit from the program. [8 CFR 214.2(q)(4)(ii)]

8.2.4 Work component

The employment or training for the international cultural exchange visitor may not be independent of the cultural component mentioned above. The work must serve as the vehicle for achieving the stated cultural objectives of the program. For example, hiring a foreign national to catalog books in a particular language for the university or college library in order to finance the stay of the alien, who at other times sings or performs a musical instrument for the general public, would not be allowed. The work in this case is not the vehicle of sharing the culture. [8 CFR 214.2(q)(3)(iii)(C)]

8.2.5 Requirements for alien participants

To be eligible for Q status, an alien must:

1. be at least 18 years old at the time the petition is filed
2. be qualified to perform the services or labor or receive the training stated in the petition
3. be able to communicate effectively about the cultural attributes of his or her home country to the American public
4. have resided and been physically outside the United States for the immediate prior year, if he or she was previously admitted as a Q nonimmigrant. The regulation does not specify that the year must be spent in the alien's home country (see Section 8.12 on change of status). [8 CFR 214.2(q)(3)(iv)]

8.2.6 Employer eligibility

Employers must submit documentation establishing their eligibility as a qualified employer under the international cultural exchange program. This documentation must include the following evidence that the employer:

1. maintains an established international cultural exchange program in accordance with the regulatory requirements
2. has designated a qualified employee who will be responsible for administering the international cultural exchange program and serve as liaison with INS
3. has been doing business in the United States for the past 2 years
4. will offer the foreign nationals wages and working conditions comparable to domestic workers similarly employed
5. currently employs and will continue to employ at least five full-time U.S. resident workers
6. has demonstrated financial ability to remunerate the international cultural exchange visitor, as shown by the most recent annual report, business income tax return, or other form of certified accountant's report. [8 CFR 214.2(q)(3)(iv)(4)]

8.2.7 Preparing the petition

Using the Form I-129 and the Q classification supplement, the U.S. employer seeking to bring in an international cultural exchange visitor must demonstrate that the prospective visitor meets the requirements stated in Section 8.2.5 and provide the following information about each individual for whom the employer is petitioning:

1. date of birth
2. place of birth
3. country of nationality
4. level of education
5. position title
6. brief job description for each participant described in the petition
7. verification and certification of the qualifications of the prospective participant to provide the service or labor or receive the training described in the petition
8. statement of the wages to be paid the participant
9. certification that the wages offered are prevailing and the working conditions are comparable to those of local domestic workers similarly employed. [8 CFR 214.2(q)(3)(iv)(4)(iii) and (5)(i)]

8.2.8 Filing the petition

The U.S. employer must file, in duplicate, Form I-129 and the Q supplement, with the applicable fee and the documentation mentioned in the above sections, at the regional service center having jurisdiction over the area where the services or labor will be performed or the training received. A new petition with appropriate documentation must be filed each time the employer wants to bring in additional international cultural exchange visitors.

8.2.9 Petition for multiple participants

The employer may include more than one participant on the petition. This is accomplished by completing a supplement sheet used when more than one person is included in the petition for the Form I-129.

If the international cultural exchange visitors are in different locations abroad and plan to apply for a visa at more than one consulate, the employer must organize the names of the prospective international cultural exchange visitors by consulate. A separate petition is not required for each individual. If the participants are visa-exempt according to 8 CFR 212.1(a) and will apply for admission at more than one port of entry, the employer must list the applicants according to each port of entry. [8 CFR 214.2(q)(5)(i) and (ii)]

8.2.10 Service, labor, or training in more than one location

If the international cultural exchange visitor is required to engage in employment or training in more than one location (with the same employer), the employer must include an itinerary with the dates and locations of the services, labor, or training with the petition. [8 CFR 214.2(q)(5)(iii)]

8.2.11 Service, labor, or training with more than one employer

If the international cultural exchange visitor will be employed or trained by more than one employer, each employer must file a separate petition with the regional service center having jurisdiction over the location of the employment or training. The international cultural exchange visitor may work part-time for multiple employers as long as each employer has an approved petition for the international cultural exchange visitor. [8 CFR 214.2(q)(5)(iv)]

8.2.12 Substitution or replacement of participants

The employer may replace or substitute a name on a previously approved petition for the remainder of the program without filing a new Form I-129. The substituting participants must meet all the qualifications described in Section 8.2.5 above. The employer should notify the consular office by letter where the foreign national will apply for the visa (or in the case of a visa-exempt participant the port of entry of the substitute or replacement). A copy of the approved petition must be included with the letter. The employer must include the following:

1. date of birth
2. place of birth
3. country of nationality
4. level of education
5. position title
6. certification of qualification of each participant to work, serve, or be trained
7. wages and working conditions in accord with Section 8.2.6. [8 CFR 214.2(q)(6)]

8.2.13 Notice of approval or revocation of the petition

The notice of approval of a petition for an international cultural exchange program on Form I-797 includes the names of the participants, their classification as Q aliens, and the validity of the petition. A petition cannot be approved if the prospective participant already has an aggregate of 15 months in Q status and has not resided outside the United States for the immediate prior year.

Petitions for multiple participants may be denied in whole or part if some of the prospective international cultural exchange visitors are qualified and others are not.

Approval of an international cultural exchange program is revoked if the employer goes out of business, withdraws the application in writing, or terminates the international cultural exchange program before the expiration of the approved petition. [8 CFR 214.2(q)(8) and (9)]

8.3 EXTENSION OF STAY

A foreign national's total length of stay in the United States in Q status cannot exceed 15 months. Extensions up to the 15-month total may be granted as a result of an entirely new petition filed by a new employer (see Section 8.2.8) or of a new petition filed by the same employer and including the employer's previous approval notice and a letter indicating any terms or conditions of the previous petition that have changed. [8 CFR 214.2(q)(10)]

8.4 CHANGE OF EMPLOYERS

An international cultural exchange visitor in the United States on the Q visa may change employers if the new employer has an approved petition and the international cultural exchange visitor has been approved for that new program. The total time the international cultural exchange visitor may stay in the United States, however, is 15 months, regardless of the number of different employers. [8 CFR 214.2(q)(5)(v)]

8.5 OBTAINING A VISA AND ENTERING THE UNITED STATES

To obtain a Q visa and enter the United States for the purpose of participating in an approved program of international cultural exchange, the foreign national should report to the consulate indicated in the original application the prospective employer filed with the regional service center. Applicants present Department of State Form OF-156 and Form I-797, Notice of Action, indicating approval of the Q petition, along with a valid passport. In many cases the Notice of Action may already have been received directly from the INS regional service center. The consular officer may request other documents to establish that the prospective participant meets all the requirements for Q status.

Although an applicant may meet the requirements for participation in the international cultural exchange program and appear eligible for an Q visa, it is the U.S. consular officer who decides finally whether the applicant will be granted a visa (see Section 2.3.3).

8.5.1 Aliens subject to passport and visa requirements

An alien required to have a valid passport and visa for entry to the United States (see Sections 2.2.3 and 2.3.2) applies for a Q visa at a U.S. consulate or embassy in accordance with the previous section. In Taiwan, application is made at the American Institute in Taiwan.

If the visa application is approved, a visa stamp is placed in the applicant's passport, noting the period of the visa's validity and the number of entries allowed (see Section 2.3). The Form I-797 is then returned to the applicant for use in applying for admission to the United States.

When the applicant arrives at the port of entry, he or she presents to the immigration official a passport valid for at least 6 months beyond the contemplated period of stay (unless the applicant is from a country with which the United States has entered into a passport agreement—see Section 2.2.4), visa, and the Form I-797. If the applicant has previously been in the United States in Q status, the immigration official must be satisfied the he or she has resided and been physically present outside the United States for the immediate prior year, unless the applicant is returning to complete a previously authorized or new international cultural exchange program. The total time in continuous Q status cannot exceed 15 months.

Upon admitting the cultural exchange visitor to the United States, the immigration officer issues a Form I-94 (Arrival/Departure Record), showing the date and place of entry, the alien's status as a Q visitor, and the expiration date of that status.

The Form I-94 is to be surrendered upon departure, except in the case of visits of 30 days or less to Canada or Mexico. When a Q visitor who has surrendered Form I-94 upon departure subsequently reenters the United States, a new Form I-94 is issued.

Q visitors are admitted to the United States until a specified date. The period of authorized stay will be noted on Form I-797. The initial period of stay may be extended as long as the total length of the program(s) does not exceed 15 months (see Section 8.2.1). A Q visitor's permission to remain in the United States is not valid beyond the date shown on the Form I-94.

8.5.2 Aliens not subject to passport and visa requirements

Passport and visa requirements for entry to the United States do not pertain to certain aliens. The most important exceptions to the passport and visa requirements are Canadian citizens or landed immigrants of Canada having a common nationality with Canadians who are entering the United States from the Western Hemisphere, and citizens of the Republic of the Marshall Islands and the Federated States of Micronesia who have proceeded in direct and continuous transit from their country to the United States (see Section 2.3.2). [8 CFR 212.1] An alien in one of these categories applies directly to an immigration inspector at a port of entry for admission as a Q visitor. The procedure is otherwise the same as that followed by aliens subject to passport and visa requirements.

8.6 AUTHORIZED STAY

A Q visitor will be admitted to the United States for the period (not to exceed 15 months) of the approved international cultural exchange program, as indicated on the Form I-797, plus 30 days for participants to make travel arrangements. [8 CFR 214.2(q)(3)(ii)] Extensions of stay are sometimes possible, but never for more than the 15-month total (see Section 8.3).

8.7 MAINTENANCE OF STATUS

An alien admitted in Q status is authorized to participate only in a program of international cultural exchange with a particular employer or trainer approved by INS. Any employment not authorized in direct connection with the approved program constitutes a violation of the visa status of the cultural exchange visitor.

8.8 EMPLOYMENT

Q visitors are authorized to work only for specific employers approved by INS. The employment may not be independent of the cultural component of the approved program (see Section 8.2.4). No other employment is authorized. Since the employment is specific to a particular employer, no Employment Authorization Document is required; however, an employer is obligated to complete an Employment Eligibility Verification Form I-9 (see Section 13.10).

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8.9 TAX OBLIGATIONS

8.9.1 Social Security

Contributions for Social Security are to be withheld by employers. Unlike F-1, M-1 and J-1 aliens, Q visa holders are not exempt from paying Social Security tax.

8.9.2 Income tax

Information on a Q visitor's tax obligations may be found in IRS publications 515, "Withholding on Nonresident Aliens and Foreign Corporations," and 519, "U.S. Tax Guide for Aliens" (see Appendix 12).

8.10 VISITS ABROAD AND REENTRY

Whenever a Q visitor wishes to leave the United States temporarily and return to continue his or her approved cultural exchange program, appropriate documentation must be carried to permit entry to another country and reentry to the United States. The reentry documentation will generally include Form I-797 and a valid passport and visa (unless the international cultural exchange visitor is not subject to the passport and visa requirements).

8.11 AUTOMATIC REISSUANCE OF VISAS

An expired Q visa may be considered to be automatically reissued to the date of application for readmission to the United States (the visa in the passport need not have a current expiration date) provided the Q visitor:

1. is applying for readmission to the United States after an absence not exceeding 30 days solely in contiguous territory;
2. has maintained and intends to resume his or her status as a Q visitor and is reentering the United States prior to the expiration of the previously authorized stay;
3. presents a Form I-797 that contains the dates of the previously authorized stay;
4. is in possession of a valid passport;
5. presents an unexpired Form I-94.

Furthermore, a person who entered the United States in a classification other than Q visitor, but whose status was subsequently changed to Q, may be considered to have the previous visa automatically reissued and converted to a Q visa if the cultural exchange visitor meets the conditions stated above.

Thus, under these circumstances (travel solely to contiguous territory for 30 days or less), a Q visitor whose visa had expired might be saved the trouble of applying for a new visa at a consular post outside the United States.

8.12 CHANGE OF STATUS

8.12.1 Change to Q status

An alien in any nonimmigrant status except C, D, K, and, in some cases, J, plus those who entered as participants in the Visa Waiver Pilot Program, may apply for a change to Q status if he or she has maintained lawful nonimmigrant status up to the time the application is filed. Application is made on Form I-129 (Petition for Nonimmigrant Worker). The application to change nonimmigrant status is made jointly at the time of petitioning for the Q status and must include the applicant's Form I-94 and the required fee (see Appendix 1). It is also recommended that the application include previous copies of any immigration forms, such as I-20s or IAP-66s that can verify the validity of the applicant's immigration status. INS cannot approve a change to Q status if the applicant has formerly held that status for 15 months and failed to spend 12 months outside the United States before applying again for Q status.

8.12.2 Change to another nonimmigrant status

A Q alien may apply to change to another nonimmigrant status for which he or she is eligible by completing Form I-539 and the supporting documentation described in the instruction sheet attached to that form.

8.12.3 Reentry to obtain new status

A Q visitor may obtain a new nonimmigrant status by leaving the United States, obtaining a new visa at a U.S. consular post abroad, and reentering with a new visa and supporting documentation.

8.13 DEPARTURE UPON TERMINATION OF STATUS

A Q visitor has 30 days to depart from the United States after completing the authorized international cultural exchange program. [8 CFR 214.2(q)(3)(ii)] The 30 days are added to the duration of the approved program.

A Q visitor departing from the United States (to places other than Canada or Mexico for 30 days or less) must surrender his or her Form I-94 to (1) a representative of the carrier providing transportation out of the United States at the time of boarding, (2) a Canadian immigration officer at the United States–Canada border, or (3) a U.S. immigration officer at the United States–Mexico border.

8.14 SPOUSE/DEPENDENT STATUS

No special provision has been made for dependents of a Q alien. Therefore, as with other visas such as the TC (Trade Canada), it may be possible for a spouse or child to apply for a B-2 tourist visa in order to accompany or follow to join the Q alien in the United States.

8.15 DIFFERENCES FROM J, O, P, AND H STATUSES

The Q visa is designed to fill a special niche of activity in the United States. As stated in Section 8.1, the category was conceived to facilitate the kind of program run by the Epcot Center at Disney World, a program dedicated to exposing Americans to cultures from abroad. Its differences from the J, P, and H statuses are outlined below.

8.15.1 Differences from J status

The J exchange-visitor program has several categories that might accommodate an alien engaging in activities similar to those of a Q visitor but in a college or university setting. However, most of these categories are inappropriate for the kind of distinct cultural exchange program intended by the Q visa. The most commonly used categories of student or research scholar/specialist are distinct and require other qualifications that may eliminate a potential participant in the Q program. One J category, trainee, had previously been used for the Epcot Center activity, but a GAO report criticized that use as inappropriate. The distinction between Q status and the J trainee category awaits further clarification in expected exchange-visitor regulations.

No 2-year home-country residence requirement exists for the Q visa as it does for the J (see Section 9). Note, however, that a Q alien is effectively barred from reentering the United States in Q status after completing 15 months of an international cultural exchange program until he or she has been physically present outside the United States for the immediate prior year.

8.15.2 Differences from O status

The central difference between Q and O aliens is that the O alien must meet standards unreachable for most prospective Q applicants (see Section 6.2.2). The length of stay for an O alien is 3 years, with incremental 1-year extensions possible. This certainly recommends the O status over the Q, with its 15-month limitation.

8.15.3 Differences from P status

The P visa (see Section 7) is also a result of the 1990 Act. This visa category has three subsets: P-1 status is intended for "internationally recognized" artists and athletes; P-2 is reserved for those artists and entertainers who are part of a "reciprocal exchange" program between organization(s) in the United States and organization(s) abroad; the P-3 category is reserved for artists and entertainers who perform as part of a "culturally unique" program. Culturally unique is defined as a style of expression, methodology, or medium that is unique to a particular society, class, religion, ethnicity, tribe, or other group of persons. This shares some aspects of the Q definition, but the length-of-stay limitations in the P category are less liberal. Initial admission in P-3 status is limited to 6 months with one 6-month extension permitted, upon application, to complete an event. Recent legislative attempts to improve the P status could eliminate or reduce the undesirability of some aspects of the P category.

8.15.4 Differences from H-1B status

An H-1B temporary-worker may work in the United States for up to 6 years. The requirement of at least a bachelor's degree for the H-1B (see Section 10.3.2) may, however, eliminate some individuals who might otherwise qualify. The Q visa has no clearly defined education requirement. Other restrictions, such as limitations as to the specific employer and the location of employment, are identical to the requirements of H-1B status.

SECTION 9

J Status: Exchange Visitors

Catheryn Cotten

New regulations governing the J visa category were not final at the time this edition was printed.

Section 9 will be produced at a later date and offered as an update to purchasers of the *Adviser's Manual*.

SECTION 10

H Status: Temporary Workers and Trainees

Lorig S. Boyajian

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Forms and Documents Discussed in This Section

I-129	Petition to Classify Nonimmigrant as Temporary Worker or Trainee
I-797	Notice of Approval or Extension of Nonimmigrant Visa Petition
I-94	Arrival/Departure Record
I-539	Application to Extend/Change Nonimmigrant Status
IAP-66	Certificate of Eligibility for Exchange Visitor (J-1) Status
OF-156	Nonimmigrant Visa Application
ETA 9035	Labor Condition Application
ETA 9029	Health Facility Labor Attestation
Schedule 2,	United States–Canada Free Trade Agreement

10.1 GENERAL

The H classifications are used for temporary workers and trainees. The Act describes six H classifications:

1. The H-1A alien "perform[s] services as a registered nurse."

2. The H-1B alien "perform[s] services in a specialty occupation."

3. The H-2A alien "perform[s] agricultural labor or services ... of a temporary or seasonal nature."

4. The H-2B alien "performs other temporary services or labor ... if unemployed persons capable of performing such service or labor cannot be found in this country."

5. The H-3 classification has two subcategories, the first of which is defined as an alien who seeks to enter the United States at the invitation of an individual, organization, firm, or other trainer for the purpose of receiving training in any field of endeavor except graduate medical education/training or training provided primarily at or by an academic or vocational institution. Incidental, supervised production necessary to the training is permitted, provided a U.S. worker is not thereby displaced. The second H-3 subcategory is set aside for participants in a special-education exchange visitor program that provides practical training and experience in the education of children with physical, mental, or emotional disabilities.

6. The H-4 classification is for the spouse and unmarried minor children of an H principal alien, if they accompany or follow to join an H-1, H-2A, H-2B, or H-3 alien. [Act 101(a)(15)(H); 8 CFR 214.2(h) and 22 CFR 41.53]

10.2 FILING AN H PETITION

A petition for H classification is filed on Form I-129 by an employer (the petitioner) who requires the services of, or will be training, an alien on a temporary basis. The petition must be submitted in duplicate, along with supporting documents specified in the instructions on Form I-129, to the INS regional service center having jurisdiction over the place in which the alien is to be employed or receive the training. INS will notify the employer on Form I-797 (Notice of Action) upon approval of a petition. INS also sends the approved petition and/or notification of approval of the petition to the U.S. consulate where the alien will apply for an H visa (the consulate must be identified in the petition). In the case of Canadian citizens, INS will notify the appropriate port of entry because Canadians are exempt from passport and visa stamp requirements. After receiving the H visa, the alien can be admitted into the United States in H status (assuming, of course, that the alien is not excluded from entering for some other reason).

Prior to January 1992, Form I-129H was utilized by INS to adjudicate H petitions. An application for a change of status from another nonimmigrant classification was made on Form I-506. An application to extend one's H status was made on Form I-539. The Immigration Act of 1990 (the Act) mandated the consolidation of these applications. Form I-129 is now used for these purposes as described below.

If the alien is already in the United States in some other nonimmigrant status and wishes to obtain H status, a designation on Form I-129 must be made and a copy of the alien's I-94 must be attached. Any dependent family members must use Form I-539, which may be submitted with Form I-129, to apply for the change of status. Processing fees vary according to the actions requested of INS. For example, if an H petition is being filed alone, one fee is necessary; if a change of status for the alien is also being requested, another fee is required. If Form I-539 is also attached, additional fees are required. When the petition is approved, the alien's application for change of status and that of dependent family members will also be adjudicated.

If the alien is in the United States in H status sponsored by another employer or trainer, the I-129 petition must state that the alien wishes to extend his or her time of temporary stay, and a copy of Form I-94 must be attached to the petition along with the prior H approval notice(s) and fee. If the alien has dependent family members, Form I-539 must be submitted with the I-129 and the additional fee(s).

The employer is the petitioner, and it is expected that the alien will receive a salary or other compensation from the petitioner and not from any other employer in the United States. If the alien is to be employed by more than one employer, each employer must submit a separate petition. H-1 employment need not be full time or for a single employer. An H-1 alien could work part time for more than one employer, provided each employer has a Form I-129 approved for the alien. [OI 8 CFR 214.2(h)(1)]

This multiple-employer characteristic requires special attention from educational institutions. It is frequently the case that some employees are paid from more than one source and perform services at more than one location. Graduate and postgraduate teaching and research often involve joint or cooperative arrangements between universities, government agencies, and private industry, and individuals may be compensated separately by each organization. For example, a teacher or researcher in a school of forestry might also provide consulting services to a government office involved in resource management and supervise research in the genetic engineering of new plant species for a private company. All of these activities could well be part of his or her university duties as a member of the teaching and research faculty, and funding may come from any or all of these sources. To meet IRCA requirements for employment eligibility (see Section 13.10), it is important to identify these multiple responsibilities and sources of compensation and,

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if there is more than one employer, to file multiple H-1B petitions. On the other hand, if the university runs grant monies through its own coffers and the alien is being compensated for his or her services through one source, multiple I-129 petitions are not required.

Processing time for an H petition varies from one jurisdiction to another, but generally ranges from 3 to 6 weeks from the time the petition is submitted to INS. If the alien applies for a visa at a consular office abroad, additional time is needed to process the OF-156 nonimmigrant visa application. At the request of the petitioner, INS will cable approval to the consular office abroad if the validity of the visa will commence within 30 days of the H adjudication and the alien is abroad, thus accelerating the process of visa application at the consulate. If an extension or a change of status is being requested at the time of filing an H petition, Form I-824 (with fee) must be submitted if the petitioner wants INS to cable the notification of approval to a consulate abroad.

A copy of a valid Health Care Facility Labor Attestation must be attached to a petition for H-1A classification. A reviewed labor-condition application (LCA), stamped by the U.S. Department of Labor (DOL), is a prerequisite for filing an H-1B petition and securing such status. Temporary labor certification is required for securing H-2A or H-2B classification. No labor certification or labor-condition application is required for H-3 status.

10.3 H-1A Status—Registered Nurses

In 1989, Congress passed the Immigration Nursing Relief Act (INRA), which divided the prior H-1 classification into two parts: H-1A for registered nurses and H-1B. It also created a requirement that all health-care facilities employing nonimmigrant H-1A nurses annually file an attestation with DOL in Washington, D.C., confirming that a number of conditions are present at the health facility and that certain steps are being taken to recruit and keep U.S. nurses. DOL must review and "approve" the facility's attestation before a facility can file an H-1A petition with INS.

To qualify for an H-1A visa, a foreign-educated nurse must (1) possess a full and unrestricted license to practice nursing in the country where the nursing degree (2 or 4 year degree) was obtained; (2) have passed the examination administered abroad by the Commission on Graduates of Foreign Nursing Schools, or have obtained a full and unrestricted license in the state of intended employment; and (3) be qualified to practice registered nursing immediately upon arriving in the state of intended employment. [8 CFR 214.2(h)(3)] A nurse who lacks a state license in the state of intended employment but has qualified for entry based on the CGFNS examination is not qualified to work immediately in all states. Many states, however, will provide an interim or temporary license while the nurse is waiting to take the first available state qualifying examination. Thus, in these states, an otherwise qualified nurse is able to work immediately. An H-1A nurse admitted to the United States pending a full and unrestricted license in the state of intended employment is admitted for a period of 1 year. To maintain H-1A status he or she must take and pass the first available licensing examination given. If an H-1A nurse fails to take the exam or fails the exam, he or she automatically loses H-1A status.

The petitioning employer must file: (1) the H-1A petition along with evidence documenting the alien's background as outlined above, (2) a current copy of DOL's notice of acceptance of the filing of the attestation (see Section 10.3.1), (3) a statement that the employer will comply with the attestation, (4) a list of what, if any, limitations will be placed on the nurse's services, and (5) a statement that notice of the filing of the H-1A petition has been provided to the registered nurse bargaining representative, or, if there is no such representative, that notice of the filing has been posted (with a copy of such notice). [8 CFR 214.2(h)(3)]

Notice to bargaining representatives (or, if there is no representative, posting of such notice) must be provided on or before the day the H-1A petition is filed with INS. Further, at the same time the H-1A petition is filed with INS, the employer must send a copy of the petition to DOL in Washington, D.C., where the attestation is on file. Finally, once the petition is approved by INS, a copy of the approval notice must be sent to DOL in Washington within 5 days of receipt of the notice.

The H-1A status initially is valid for up to 3 years (or 1 year if the alien does not possess a state license) with extensions available for up to 2 more years. There is a 5-year limitation on the total period an individual may be in H-1A status, with provision for a sixth year extension in extraordinary circumstances (see Section 10.10). The concept of dual intent applies to H-1A applicants (see Section 10.4.3).

The petitioning employer must prepare and file, on an annual basis, an attestation to the Division of Foreign Labor Certifications, Employment and Training Administration, U.S. Department of Labor, in Washington, D.C. The attestation is completed on Form ETA 9029 and filed in duplicate by the chief executive officer of the facility. By completing and signing ETA 9029, the facility is attesting (1) that the delivery of health care services would be seriously disrupted through no fault of its own without the services of aliens because (a) the current registered-nurse (RN) vacancy rate is 7 percent or more, (b) the RN shortage makes it impossible to use at least 7 percent of beds, (c) essential health services must be eliminated or reduced because of the shortage, or (d) the shortage prevents the facility from implementing established plans for new health-care services (if the facility has laid off any RNs in the preceding year, it cannot meet the last condition); (2) that the employment of aliens will not adversely affect the wages and working conditions of RNs similarly employed and that the aliens will be paid the wage rate of RNs similarly employed at the facility; (3) that the facility is taking steps to recruit and retain sufficient RNs who are U.S. workers; (4) that there is no strike; and (5) that notice of filing the attestation is being provided to a bargaining representative at the facility or, if there is no representative, that notice has been posted in at least two conspicuous locations on the premises. Once the attestation has been reviewed and "accepted" (approved), DOL will retain one copy for public inspection purposes and return one copy to the employer. A copy of the returned attestation must be submitted with each H-1A petition filed by the facility during its 1-year validity.

These tasks of obtaining and maintaining the validity of a labor attestation and ensuring that all notice requirements are met are extremely complex and burdensome. Nevertheless, they must be strictly followed. If investigations reveal violations, fines and a suspension of the attestation could result, preventing an employer from hiring or extending the stay of any H-1A nurses for a least 1 year. [20 CFR 655.310(p); 655.415(c)]

The H-1A program as outlined above will expire on 1 September 1995 unless extended by legislation. INRA requires that a committee comprised of government representatives, health-care-management personnel, and organized labor analyze and recommend, among other things, whether to extend the H-1A program beyond its expiration date. [INRA Section 3] This committee was formed in January 1991.

For more detailed information regarding H-1A petitions and underlying attestation procedures, see Robert E. Hopper, "Immigration Issues for Professional Nurses," *Immigration Briefings*, no. 91-7, July 1991 (Federal Publications Inc.).

10.4 H-1B Status—Specialty Occupations

An H-1B temporary worker is defined as a person who will perform services in a specialty occupation. Formerly, the nonimmigrant H-1B classification was available to aliens of "distinguished merit and ability" or "professionals." As of 1 October 1991, the H-1B classification is available for those occupations that require "theoretical and practical application of a body of highly specialized knowledge and attainment of a bachelor's or higher degree in the specific specialty or its equivalent as a minimum entry into the occupation in the United States." [Act 101(a)(15)(H)(i) and 8 CFR 214.2(i)(1)] With regard to the degree requirement, the alien must demonstrate completion of the degree (or its foreign equivalent) or possess experience equivalent to the completion of such a degree. To establish experience equivalent to a bachelor's degree, INS will accept 3 years of progressively responsible employment experience in a particular field as the equivalent of each year of university study that the alien lacks. For experience equivalent to a master's degree, the alien must possess a bachelor's degree followed by at least 5 years of experience in the field of specialty. Experience can not be substituted for education to assess equivalency to a Ph.D.

The regulations implementing the Act further define specialty occupation to include such fields as architecture, engineering, mathematics, physical sciences, social sciences, medicine and health education, business specialties, accounting, law, theology, and the arts. [8 CFR 214.2(h)(4)(ii)(A)] Thus, the H-1B classification is appropriate for faculty members, researchers and many other kinds of temporary workers at the professional level.

As a preliminary step in obtaining H-1B classification, the Act of 1990 has mandated a process to monitor and prevent situations where the employment of H-1B aliens could have an adverse effect on the wages and working conditions of U.S. workers. The Act has charged DOL with governing this process. This is the first time that the DOL will be involved in the H-1B program. In its regulations, INS and DOL have created a labor-condition application (LCA) (see Section 10.4.1) as a condition for obtaining H-1B status for alien workers qualified for such status and for extensions of H-1B status.

The Act also makes the H-1B petitioner "liable for the reasonable costs of return transportation of the alien abroad [last place of foreign residence], if the alien is dismissed from employment by the employer before the end of the period of authorized admission" in H-1B status. [8 CFR 214 .2(h)(4)(iii)(E)(4)] The employer will be so liable for all H-1B aliens for whom it petitions after 1 October 1991. If the employer fails to comply with this provision, an alien may advise the INS service center in writing. The complaint by the alien will be placed in the employer's file for that alien. No penalties can be imposed on the employer, but INS could consider the fact that the employer did not comply with this provision when adjudicating future nonimmigrant petitions by the employer.

The Act of 1990 imposes a cap of 65,000 on the number of H-1B petitions that INS may approve in each fiscal year. It is not anticipated that this cap will be reached in the next few years.

The proposed regulations implementing the Act of 1990 also provide for a special category of aliens to be accorded H-1B classification who are, based upon a reciprocity agreement, to "perform services of an exceptional nature requiring exceptional merit and ability relating to a [Department of Defense] cooperative research and development project or a coproduction project provided for under a Government-to-Government agreement administered by the Secretary of Defense." [8 CFR 214.2 (4)(i)(A)(2)] For more information regarding this classification see 8 CFR 214.2 (4)(vi).

Aliens classified as H-1B for DOD purposes may not exceed one hundred at any time.

The regulations require a petition for H-1B classification to be filed with a duly reviewed LCA and documentation supporting the petitioning employer's contention that the services to be performed require an individual who possesses a bachelor's, master's, or Ph.D. degree and that the alien is qualified to assume that position. Such documents should include a statement from the employer detailing the job duties to be performed and, depending on the position offered, copies of any degrees, academic records, licenses to practice the profession, and affidavits or letters attesting to the alien's higher education, technical training, or qualifications as a professional. To establish specialized employment experience for degree-equivalency purposes, the petition should be supported by affidavits attesting to the beginning and ending dates of the alien's employment and describing the alien's experience or exceptional ability by those who are in a position to make such statements. The petition must show that the alien is coming to the United States for temporary employment, although the position the alien will occupy may be a continuing one.

10.4.1 Labor-condition application for H-1B

The INS regulations and DOL interim final rules specify that before filing a visa petition for H-1B specialty occupation classification, DOL must review an LCA in the occupational specialty for which H-1B classification will be sought. Upon completion of such review by DOL, the LCA is returned to the employer and is subsequently submitted with Form I-129 and other supporting documentation to INS for H-1B adjudication. The employer must submit an original and one copy of a completed and signed LCA on ETA Form 9035 to the regional office of the DOL Employment and Training Administration in the area where the worker will be employed (a list of such offices appears in Appendix 6). Regional offices will review these applications for completeness within 7 working days of their receipt and return one copy to the employer. [8 CFR 214.2(h)(4)(i)(B); Interim Final Rule 20 CFR 656.730]

The petitioning employer must provide on Form 9035 (1) the occupational code for the job from DOL's *Dictionary of Occupational Titles*, (2) the employer's own title for the job, (3) the number of H-1B workers sought in that classification, (4) the gross wage rate of pay, (5) the period of employment of up to 6 years, and (6) the place(s) of intended employment. The LCA may be filed at any time prior to submitting Form I-129 and need not indicate the same period of intended employment as the I-129. The employer may use one LCA for more than one occupational classification and for multiple positions. For instance, if it is anticipated that an institution will require four assistant professors of finance within the next 6 years, the number "four" is designated for the number of aliens sought in that classification. After Form 9035 is returned by the DOL, for the next four assistant professors of finance that will need an H-1B petition, a copy of the duly reviewed LCA may be submitted with Form I-129. However, if a fifth assistant professor is offered a position within that time frame, a new LCA will be necessary. Additionally, an employer may not substitute one alien for another on the LCA. For example, if an LCA valid for 6 years was filed for one assistant professor who leaves employment before the expiration of the LCA, a new LCA is required before another alien may be hired to replace him.

By signing and submitting a completed Form 9035, the employer confirms that it will comply with the following conditions:

1. That it will pay the H-1B alien "no less than the greater of the actual wage paid to all other individuals at the work site with similar experience and qualifications for the specific employment" and the prevailing wage for the occupational classification in the area of intended employment. [20 CFR 730] Thus, the employer must determine the prevailing wage for the position as well as the actual wages of employees performing duties similar to those of the alien with similar experience and qualifications before an LCA can be filed. The alien may be paid more than the required wage rate. The prevailing wage determination for the position must be updated every 2 years and at that time the H-1B worker must be paid no less than the actual rate of pay or the prevailing wage, whichever is higher. Making prevailing and actual wage determinations is treated in detail below.

2. That notice is being provided that the LCA is being filed. If there is a collective bargaining representative, the employer must notify that representative, on or before the day the LCA is submitted to DOL, that the LCA is being filed. The notice must identify all pertinent information on the LCA and include the following statement: "Complaints alleging misrepresentation of material facts in the LCA and/or failure to comply with the terms of the labor condition application may be filed with any office of the Wage and Hour Division of the United States Department of Labor." Where there is no collective bargaining representative, the employer must post such notice in at least two conspicuous locations on its premises before the LCA is filed and the notice must remain posted for at least 10 days. [20 CFR 656.730(d)(4) and (h)]

3. That the employment of the H-1B alien will not adversely affect the working conditions of workers similarly employed in the area of intended employment.

4. That at the time the application is signed, there is no strike, lockout, or work stoppage related to a labor dispute in the occupation.

A copy of the LCA, a memo describing the methodology used to determine actual and prevailing wages, copies of the notices posted (with dates and locations) or sent to the bargaining representative, and all supporting documentation used to determine the prevailing wage must be made available for public examination 1 day after the date the LCA is submitted to DOL. All of the foregoing information must be kept for 1 year beyond the validity of the LCA. [20 CFR 760] Payroll records of the alien and of all employees whose wages were used to calculate the actual wage need not be made available for public examination but must be retained for 3 years beyond the validity of the LCA. They must be made available should there be an investigation by DOL.

A complaint by any aggrieved person will be investigated if there is reasonable cause to believe that a misrepresentation or a failure to meet any condition on the LCA has occurred. If DOL finds that the employer failed to pay the required wages, e.g., due to an inappropriate prevailing wage determination, the H-1B alien will be entitled to collect back wages. Civil money penalties of up to $1,000 per violation may be imposed. If a willful failure is found (where the employer knows the failure is contrary to the law or has reckless disregard for the question of whether its conduct was contrary to the law) DOL will notify INS and the employer will be barred from filing H petitions for at least 1 year. [8 CFR 214.2(h)(i)(B)(5); 20 CFR 656.810]

The Act makes the employer responsible for establishing the wage that it must pay an H-1B alien based on the best information available at the time an LCA is filed. Thus, it is critical that extra effort be made to obtain appropriate information and documentation regarding (1) actual wages paid to all other individuals with similar experience and qualifications for the specific employment in question and (2) the prevailing wage level for the occupational classification. Employers are not precluded from paying H-1B aliens more than the higher of the actual wage or the prevailing wage; however, it is imperative that the employer amass the appropriate materials to support this practice. As a practical matter, all information and documentation regarding prevailing wage and actual wage must be gathered before filing an LCA; otherwise it is impossible to determine the prevailing or actual wages. [20 CFR 730(e)(1) and (2)]

To determine the actual wage, the employer must first identify all other employees who are performing the actual set of duties and who have the same responsibilities the H-1B alien will have. Consideration should be given to the following factors: (1) the length and type of work experience of other employees in the position to be occupied by the alien, compared to the experience of the alien, (2) the similarity of job qualifications, educational background, and class rank, (3) job responsibilities and actual duties, and (4) specialized knowledge in a specific area within the field. Other "legitimate business factors" justifying different compensation levels for the same job, such as professional distinction or international acclaim, are also acceptable considerations.

Once employees with substantially the same duties and responsibilities as the H-1B alien have been identified, their compensation levels must be examined in order to determine what the actual wage is for the position. In some instances, an H-1B alien may be sought to occupy a position for which there are no similarly employed individuals. For instance, a university will petition for an H-1B for an instructor of Indonesian music and does not have any other such positions. In a unique situation such as this, the actual wage will be the wage paid to the H-1B alien.

At this point, a statement should be prepared and retained detailing the basis used to establish the actual wage, and how it relates to the wage set for the H-1B alien.

The prevailing wage is generally considered the average rate of wages paid to workers similarly employed in the area of intended employment, within 5 percent. Although there are a variety of legitimate methods of determining the prevailing wage, the regulations require that the determination be based on the best information available.

If the position is covered by a union contract, negotiated at arms length, the wage rate applicable to the occupation in the bargaining agreement is considered the prevailing wage. The regulations consider a union contract as one of the best available sources in determining prevailing wage. [20 CFR 730(e)(1)(ii)]

An employer may also contact SESA, the State Employment Security Agency (the local office of DOL), to obtain a determination of the prevailing wage. SESA conducts and maintains prevailing wage surveys as part of the permanent alien labor certification process. To obtain a prevailing wage determination from SESA, a detailed job description, the minimum requirements for the position and information regarding the size and financial strength of the employer are submitted. Prevailing-wage-determination request forms are available from SESA. DOL considers a SESA determination a "best-available" source. If the employer obtains its prevailing wage determination from SESA, DOL will accept that determination as correct and will not question its validity provided that the employer maintains a copy. Also, according to DOL's interim final regulations, a complaint alleging inaccuracy of a SESA determination will not be investigated.

Another legitimate source is an "independent, authoritative (published) source survey," such as a professional, business, educational or organizational salary survey which has recognized standing in an occupational field and was conducted within the immediately preceding 24 months. The survey must cover the occupational classification for which an H-1B is sought. Preferably, it should be region-specific and separate the businesses it covers by size and type. The DOL will not investigate a prevailing wage determination from such a survey if the employer, acting in good faith, has applied the survey accurately to the occupation and the geographic area of intended employment. DOL may investigate if it receives significant evidence that shows a prevailing wage that varies substantially from that attested to by the employer.

The employer may also use other legitimate sources but will have to be prepared to demonstrate their legitimacy in the event of an investigation. An example of a legitimate alternative source may be a salary survey done by the employer evidencing the rate of pay at companies within a 100-mile radius for a particular position requiring substantially similar levels of skills within the area of intended employment, by contacting ten or more like employers in the area where the alien will work and receiving written, well detailed statements regarding the position, requirements, and salary level.

In any case, the employer must develop and retain documentation on how it determined the prevailing and actual wage for each H-1B petition and may have the burden of proving the validity of such determinations in the event a complaint is filed. To evidence an actual wage determination, payroll records for each employee in the narrowly defined occupational classification must be maintained. Each payroll record must include the employee's name, address, occupation, rate of pay, the hours worked each day and each week, the total daily or weekly straight-time earnings of that employee, the total overtime compensation for the week for that employee, total additions to or deductions from pay for each period, and total wages paid each pay period. Such payroll records must be retained generally for 3 years from the date of the creation of the record. The DOL regulations also require that documentation to support an employer's prevailing wage rate be updated every 24 months from the date the LCA is approved, and that the H-1B alien receive no less than the greater of the actual or updated prevailing wage for the occupation for the remaining period of intended employment.

Employers should be very careful in designating any particular job classification and must describe job duties with as much finesse as possible. For example, in the field of computer programming under the new LCA process, it would be not only useful but imperative to divide the class of computer programmer into a number of subclasses, such as junior programmer, senior programmer, project leader, etc., each with varying job duties. Such classifications or subclassifications, supported by adequate documentation, will justify different wage levels for each, and thereby prevent the imposition of penalties.

10.4.2 Period of stay

An H-1B alien may be admitted to the United States for an initial period of up to 3 years but may not exceed the employment period of the LCA. Extensions of stay may be received for up to 3 more years. Any extension petition must be accompanied by a duly reviewed LCA. The maximum total stay in H-1B status is 6 years (see Section 10.10 for procedures for extension of stay). [8 CFR 214.2(h)(13)(i)(B)(iii)(A), and (13)(ii)(B)(i)] An H-1B alien who "has spent 6 years in the United States ... [in H-1B status] ... may not seek extension, change of status or be readmitted to the United States under the H or L visa classification, unless the alien has resided and been physically present outside the United States, except for brief trips for business or pleasure, for the immediate prior year.... Brief trips for business or pleasure for the immediate prior year are not interruptive of the 1-year requirement, but do not count towards fulfillment of the required time abroad." The H-1B limitation on admission will not apply to "aliens who do not reside continually in the United States and whose employment in the United States is seasonal, intermittent, or an aggregate of 6 months or less per year. In addition, the limitations shall not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment." Clear and convincing proof must be provided to show that the alien qualifies for one of these exceptions. The proof may include copies of tax returns, arrival and departure records, or other evidence to show the short-term nature of employment. [8 CFR 214.2(h)(13)(iii) and (v)]

10.4.3 Dual intent

The Act, for the first time, gives statutory recognition that the approval of a labor certification for permanent employment or the filing of a preference petition for permanent resident status for an alien shall not be a basis for denying an H-1A or H-1B petition, a request for extension, admission to the United States, or change of status from another visa category. [Act 214(b)] The Act of 1990 allows an alien applicant to come to the United States legitimately for a temporary period as an H-1A or H-1B and to depart voluntarily at the end of the authorized stay unless the alien has by then become a permanent resident of the United States. No longer must a prospective H-1A or H-1B alien demonstrate that he or she has not abandoned a residence abroad. The provisions also allow an H-1A or H-1B alien to continue to provide temporary services as a nonimmigrant while both the employer and the alien are taking steps to convert the alien to a permanent status.

The concept of dual intent is of particular interest to colleges and universities that appoint foreign faculty members to tenure-track positions with the possibility of awarding tenure after an initial period of temporary employment. The concept of dual intent allows an alien to obtain H-1B status and maintain that status while making the lengthier arrangements for adjustment to permanent-resident status (see Section 12.7). The same possibilities exist for non-tenure-track researchers whose intent and length of employment are subject to change.

Dual intent is a subtle concept that must be considered carefully by employers and aliens alike. The statute and regulations recognize dual intent only for H-1A, H-1B, L, O, and P aliens and their dependents in H-4, L-2, O-3, or O-4 status, and not for any other classes of nonimmigrants. Most important, dual intent will now be specifically mentioned in the State Department's *Foreign Affairs Manual*, which will no longer allow consular officers to make determinations of the intent of an applicant for a nonimmigrant H-1A and H-1B visa. Therefore, it is now possible to obtain a new H-1A or H-1B visa from a consular officer abroad as well as revalidation of that H-1A or H-1B visa without fear of a denial.

10.4.4 Foreign medical graduates

Prior to 1 October 1991, an alien physician educated outside the United States (a foreign medical graduate, or FMG, other than a physician of "national or international renown"—see Section 10.4.5) could be documented as an H-1B temporary worker only if coming to the United States for the purpose of engaging in teaching or research. If an alien was coming for the purpose of obtaining graduate medical education or training (for an internship or residency or similar purpose involving patient care—see Section 9.12.1), the FMG was to come as an exchange visitor under the P-3-4510 program of the Educational Commission for Foreign Medical Graduates and was not eligible for H-1B classification (see Section 9.12.4). In drafting the Act, Congress omitted the prohibition of foreign medical graduates from obtaining an H-1B visa if coming to the United States principally to engage in patient care. The Immigration Technical Corrections Act of 1991 (Title III of H.R. 3049), signed by the president on 12 December 1991, explicitly restores conditional language to the H-1B classification for physicians. Like the previous law, it specifies that a graduate of a foreign medical school may obtain an H-1B if the graduate is coming for the purpose of teaching or research at a public or nonprofit private educational or research institution or agency. However, a nonimmigrant physician intending to provide patient care or receive clinical training is now eligible to obtain an H-1B if the alien (1) has passed the Federation Licensing Exam (FLEX) or an equivalent examination as determined by the secretary of health and human services and (2) has competency in oral and written English or is a graduate of a school of medicine accredited by a body approved for the purpose by the secretary of education (regardless of whether such school of medicine is in the United States). Schools so accredited include those in the United States and Canada.

In September 1992, the Department of Health and Human Services announced that two U.S. licensing examinations are considered equivalent to the FLEX for the purposes of granting H-1B status to foreign physicians. The two equivalent examinations are: (1) Steps 1, 2, and 3 of the new U.S. Medical Licensing Examination (USMLE) and (2) Parts I, II, and III of the National Board of Medical Examiners (NBME) certifying examinations. The USMLE will be phased in during 1992, and the NBME will be discontinued by mid-1993 (see Section 12.4.4.2). Step 1 of the USMLE was administered for the first time in June 1992, and Step 2 was initially administered in September 1992. Step 3 of the USMLE will be administered for the first time in 1994. [57 *Federal Register* 42755, 16 September 1992] During this transition period, certain combinations of the Parts of the NBME and Steps of the USMLE will be considered to satisfy the examination requirements.

"Foreign medical graduates" (or "graduates of a medical school," the term used in the Act for this purpose) are defined as "aliens who have graduated from a medical school or who have qualified to practice medicine in a foreign state, other than such aliens who are of national or international renown in the field of medicine."[Act 101(a)(41)] This rather ambiguous definition is intended to encompass aliens who have graduated from a medical school in a foreign state or who have otherwise earned in a foreign state their qualifications to practice medicine. It excludes alien physicians who are of national or international renown, even if they obtained their medical educations outside the United States.

10.4.5 Medical doctors of national or international renown

An alien medical doctor "of national or international renown" is not considered to be a foreign medical graduate and, therefore, is not subject to any of the restrictions of the immigration law regarding entry to the United States for the purpose of graduate medical education and training or the practice of medicine. Therefore, presumably, medical doctors of national or international renown could be documented as H-1B temporary workers for the purpose of teaching, research, patient care, or any other position involving the practice of medicine. However, the departments of State and Justice have not developed guidelines as to what constitutes a medical doctor of national or international renown. In the absence of guidelines, probably the best standard to use is whether the alien can be considered of exceptional ability in the sciences or the arts for purposes of applying for permanent residence status.

10.4.6 U.S.-educated medical interns and residents

Alien medical doctors who have received their medical training and have graduated from a U.S.medical school are not considered to be foreign medical graduates. Therefore, such aliens may undertake internships and residencies in the United States while in H-1B status without first passing FLEX, and are eligible for this classification in order to perform any other services as a member of the medical profession, including services primarily involving direct patient care. [8 CFR 214.2(h)(v)(B)] However, the 6-year limitation on the stay of an H-1B alien allows too little time for the completion of some of the longer residencies. Please note that in drafting the interim regulations implementing the act of 90 and subsequent amendments of 1991, INS states that all non-resident aliens, regardless of where their medical education was obtained, are required to have passed the FLEX. The Service has acknowledged this error, but final regulations have not been promulgated to rectify it.

10.5 H-2 STATUS—TEMPORARY WORKERS

The H-2 temporary-worker classification is divided into two categories, H-2A for temporary agricultural workers and H-2B for other temporary workers.

10.5.1 H-2A status—temporary agricultural workers

An H-2A temporary agricultural worker is a person who is "to perform agricultural labor or services as defined by the Secretary of Labor ... of a temporary or seasonal nature." [Act 101(a)(15)(H)(ii)] This is a new classification created by the Immigration Reform and Control Act of 1986 (IRCA, PL 99-603). It is unlikely that advisers in colleges and universities will encounter H-2A aliens.

10.5.2 H-2B status—other temporary workers

An H-2B temporary worker is a person "who is coming temporarily to the United States to perform temporary services or labor, if unemployed persons capable of performing such services or labor cannot be found in this country." [Act 101(a)(15)(H)(ii)] The petitioner must demonstrate that unemployed persons capable of performing the services cannot be found in this country and that the alien is coming temporarily to perform services that are temporary in nature. The petitioner's need for the services must be a one-time occurrence or meet a seasonal, peak-load, or intermittent need. The petitioner's need must be for less than 1 year, although the underlying job can be described as permanent or temporary. [8 CFR 214.2 (h)(6)(ii)(B)] Although the petitioner may have a continuing need for the services of technicians (for instance), an H-2B petition may be approved only where work is limited to a particular, temporary need as described above.

An employer must attach to an H-2B petition either a temporary labor certification or a notice from DOL that the certification cannot be issued. In the latter case, the employer must present countervailing evidence that qualified U.S. workers are not available. [8 CFR 214.2(h)(6)(iii) and (iv)]

The H-2B classification is not available to foreign medical graduates coming to the United States to perform services as members of the medical profession. [Act 101(a)(15)(H)(ii)] During each year, the total number of H-2B petitions that will be approved may not exceed 66,000. [Act 214 (g)(B)]

10.6 H-3 STATUS—TRAINEES

10.6.1 General

An H-3 trainee is defined as a person "coming temporarily to the United States as a trainee, other than to receive graduate medical education or training or training provided primarily at or by an academic or vocational institution." [8 CFR 214.2 (h)(1)(ii)(E)] Regulations further define an H-3 trainee as a "nonimmigrant alien who seeks to enter the United States temporarily at the invitation of an organization or individual, other than graduate medical education or training, such as agriculture, commerce, communication, finance, government, transportation or the professions as well as training in a purely industrial establishment." [8 CFR 214.2(h)(7)]

A trainee may receive remuneration from an employer, but may not engage in productive employment unless incidental to the training, nor displace a U.S.worker. Generally, the training should not be available in the alien's home country.

A petitioner must attach to each H-3 petition evidence of a well structured training program and a statement describing the kind of training to be given and setting forth the proportion of time that will be devoted to productive employment; the number of hours that will be spent respectively in classroom instruction and in on-the-job training with supervision; the position or duties abroad for which this training will prepare him or her; the reason why such training cannot be obtained in the alien's home country; and why it is necessary for the alien to be trained in the United States. [8 CFR 214.2(h)(7)(ii)(A) and (B)]

An alien may be classified as an H-3 for the duration of the training program or up to 2 years, whichever is less. Unlike the H-1B, H-3 aliens applying for admission to the United States must possess nonimmigrant intent and satisfy a consular officer that they have no intention of abandoning their residence abroad.

Educational institutions may not petition for H-3 status for aliens who wish to undertake academic training programs not covered under the terms of the institution's exchange-visitor program.

10.6.2 Nurses

A petitioner may seek H-3 classification for a nurse who is not qualified for H-1A status but who wishes to come to the United States for further training in nursing that is unavailable in his or her native country and will benefit an overseas employer. The petitioner must attach to the petition evidence that the beneficiary has obtained a full and unrestricted license to practice professional nursing in the country where the nursing education was obtained, or that such education was obtained in the United States or Canada, as well as a statement from the petitioner certifying that to the best of the petitioner's information and belief, "the beneficiary is fully qualified under the laws governing the

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place where the training will be received to engage in such training, and that under those laws the petitioner is authorized to give the beneficiary the desired training." [8 CFR 214.2(h)(7)(i)(B)] To obtain an H-3 classification in this area, all general requirements must be met (see Section 10.6.1).

10.6.3 Foreign medical school student trainees

According to the regulations,

> A hospital approved by the American Medical Association or the American Osteopathic Association for either an internship or residency program may petition to classify as an H-3 trainee a medical student attending a medical school abroad, if the alien will engage in employment as an extern during his/her medical school vacation. [8 CFR 214.2(h)(7)(i)(A)]

To obtain an H-3 classification in this area all general requirements must be met (see Section 10.6.1).

10.6.4 Special-education exchange visitors

The Act provided admission for individuals coming to the United States to participate in a structured program that provides for training and hands-on experience in the education of children with disabilities. The regulations have designated the H-3 classification for these individuals, although the latter will not be subject to the general requirements of other H-3 visa holders. INS will approve up to 50 such petitions each year. The petitioning employer must have a professionally trained staff and submit to INS a description of the training as well as evidence that the alien is nearing completion of a bachelor's or higher degree in special education, or already holds such a degree, or has extensive prior training and experience in the field. These trainees may perform productive employment but are limited to this H-3 classification for up to 18 months. At the end of the 18 months, the trainee may not change status or be readmitted in an H or L visa classification unless he or she has been physically outside the United States for at least 6 months. [8 CFR 214.2 (7)(iv) and (13)(iv) and (v)]

10.7 H-4 STATUS—DEPENDENTS

The spouse and unmarried minor children of an H-1, H-2, or H-3 alien are accorded H-4 classification. Application for this classification is included in the petition for the principal H alien. [8 CFR 214.2(h)(9)(iv)] H-4 status does not provide for employment authorization, although H-4 dependents may attend school while in H-4 status. H-4 students who must work as part of their program or assistantship must change their status to F-1.

10.8 EMPLOYMENT STATUS

A temporary worker or trainee in H-1A, H-1B, H-2A, H-2B, or H-3 status may be employed only by the petitioner through whom the status was obtained. H-4 aliens may not be employed.

An H-1B alien changing employers is not eligible to work for the new employer until that employer's petition (Form I-129) has been approved. However, the H-1B employee may continue to work for the old employer after receiving authorization to work for the new one, provided the original petition is still valid.

10.9 H AND J STATUS COMPARED

10.9.1 Differences between H-1 and J-1 status

Educational institutions interested in having the services of nonimmigrant aliens for professional teaching and research positions can assist such aliens to secure either H or J visas. H-1B classification is meant to be used by aliens who are coming to the United States to perform temporary services. However, the approval of a permanent labor certification or the filing of a preference petition for an H-1 alien would not be considered contradictory to the alien's temporary H-1 status. This new provision of the regulations recognizing dual intent has important implications in the hiring of foreign faculty members. The concept of dual intent is recognized for H-1B aliens and is contradictory to the purposes of J-1 classification.

Advantages of H-1B status include the following: (1) while temporary, it allows a maximum period of stay of 6 years, whereas J-1 professors and researchers are limited to a maximum of 3 years; and (2) an H-1B alien may apply for adjustment of status to permanent resident or for change of status to another nonimmigrant classification, whereas some J-1 aliens are prohibited from such changes because of the 2-year home-country residence requirement of Section 212(e) of the Act (see Section 9).

The Department of State, the United States Information Agency, and INS make a further distinction between the H-1B alien who comes specifically to perform services and the J-1 exchange visitor who comes as a participant in an exchange-visitor program designed to "promote interchange of persons, knowledge, and skills, and the interchange of developments in the field of education, the arts and sciences," in such a way as to promote "mutual understanding between the peoples of the United States and the people of other countries." [22 CFR 514.1]

J-1 status does not require a labor certification or LCA, unlike the H-1B. Obtaining an H-1B visa usually takes more processing time than is required for a J-1 visa. A petition for H-1B classification must be approved by INS before an alien may apply for a visa, and supporting documentation must be collected and submitted with the petition. However, an alien may apply for a J-1 visa immediately upon receiving Form IAP-66 from the program sponsor. On the other hand, if the alien is in the United States and will apply for a change of status or extension of stay under a new petition by a new employer, the petition and the application for change of status or extension of stay are usually adjudicated simultaneously and within 3 to 6 weeks of filing. A fee is required for an H petition and for extension of stay in H status.

10.9.2 Differences between H-3 and J-1 status

H-3 and J-1 trainees are similar in many respects. The chief differences between them are that (1) H-3 trainees may not engage in productive employment and J-1 trainees may; (2) H-3 trainees may be allowed to remain in the United States longer than J-1 trainees; (3) J visas may be obtained more easily and quickly than H visas; (4) the employer of a J trainee need not provide elaborate documentation concerning the training program, as is required of the employer of an H-3 trainee; and (5) a fee is required for an H-3 petition and for extension of stay in H-3 status, whereas no fee is required for issuing Form IAP-66. A fee is required for an extension of stay in J status.

Neither H-3 nor J-1 trainees require labor certification. Both types of trainees may receive remuneration for their services.

10.10 EXTENSION OF STAY

An alien may be admitted to the United States in H-1A status for an initial period of up to 3 years, or only up to 1 year if the alien does not possess a full and unrestricted license in the state of intended employment (see Section 10.3). Extensions of stay may be authorized not to exceed a maximum period of 5 years from initial entry in H-1A status. A sixth year is possible under extraordinary circumstances. Extraordinary circumstances are considered to exist when it is determined by INS "that termination of the alien's services will impose extreme hardship on the petitioner's business operation or that the alien's services are required in the national welfare, safety or security interests of the United States. Each [extension] must be accompanied by a current copy of DOL's notice of acceptance of the petitioner's attestation on Form ETA 9029." [8 CFR 214.2 (15)(ii)(A)]

An alien may be admitted to the United States in H-1B status for an initial period of up to 3 years, provided the employer has need of the alien's services for that period of time. Extension of stay may be authorized for up to 3 more years, not to exceed a maximum period of 6 years in the United States in H-1B status. It is important to remember that an LCA, duly reviewed by DOL, is required for any petition filed for a H-1B extension after 1 October 1991 regardless of when the original H-1 visa was obtained.

An alien in H-2B status may be admitted for the period of validity of the temporary labor certification. An application for extension of stay in H-2 status "may be authorized for the validity of the labor certification or for a period of up to 1 year.... The alien's total period of stay as an H-2A or H-2B worker may not exceed 3 years." [8 CFR 214.2(h)(15)(ii)(C)]

An extension of stay may be authorized to an H-3 worker for the length of the training program, but the total period of time an individual can be in H-3 status is 2 years. H-3 aliens who are participating in a special-education training program may only stay up to 18 months. [8 CFR 214.2(h)(15)(ii)(D)]

Application for extension of stay in H classification is made on Form I-129 accompanied by a copy of the alien's I-94, a statement from the employer detailing the position, salary and length of time requested, the prior H approval notice, and a fee, but without documents evidencing the alien's background unless it is an H-2B extension. The application must be submitted to the regional service center. Application for extension of stay of dependents who are classified H-4 must be made on Form I-539 with copies of all I-94s attached to the form. Separate fees are now required for extension of H-4 aliens—one fee for a spouse and a separate fee for each child.

10.11 VISITS OUTSIDE THE UNITED STATES AND REENTRY

The petitioning employer may furnish the Form I-797 (not a copy) on which INS action on the petition was originally noted to a beneficiary of an H petition who desires to depart from and return to the United States to resume the same employment within the period for which the petition is valid. INS may also issue an original Form I-797, upon request, to an H alien who has lost the original and intends to depart from and return to the United States within the period for which his or her temporary stay has been authorized to resume the same employment. A new Form I-797 is issued for an extended petition and an extended stay. It is prudent to give the H-1B alien a letter of current date confirming that he or she is currently employed in the same position as described in the H petition and needs to reenter the United States to continue that employment. Although this documentation is not required by the regulations, many consular officers and INS officers at ports of entry require such a statement.

An alien planning to travel temporarily outside the United States should be certain to have all necessary documents for entry into all countries he or she intends to visit and should ascertain whether the H visa stamped in his or her passport is valid for reentry. If the visa needs to be extended, it will be necessary for the alien to present the passport, Form I-797, and a letter confirming current employment to a U.S. consular officer outside the United States.

It is possible to have an H visa reissued in the United States. [22 CFR 41.111(b)(2)] The alien must send the passport, Form I-94, Form I-797, a completed Form OF-156 (Nonimmigrant Visa Application), and a signed

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passport-size photograph to the Visa Office, Bureau of Consular Affairs, Department of State, Washington, D.C. 20520. A fee is sometimes required, depending on reciprocity arrangements with the country of the alien's nationality. Precise requirements for reissuance of H visas, including the amount of the fee, if applicable, may be obtained by telephoning the Visa Office at (202) 663-1213.

An H visa may be considered to be automatically extended upon application for reentry to the United States if the alien is returning from Canada or Mexico after a visit of not more than 30 days, has a valid Form I-94, does not require a waiver of inadmissibility under Section 212(d)(3) of the Act, and is returning to the United States to resume H status. [22 CFR 41.112(d)]

10.12 Taxes

The employment of an H alien is not excluded from Social Security coverage and is therefore subject to Social Security employee tax (see Social Security Administration publication, "Social Security Coverage of Foreign Students and Exchange Visitors," and Appendix 12).

Income tax is paid on income derived from employment in H status, unless tax exemption is specifically provided by treaty or convention. Resident or nonresident status for tax purposes is determined by the "substantial presence" test. H aliens generally are classified as resident aliens for tax purposes, which in many cases is an advantage over the J-1 status (see IRS publication 515, "Withholding on Nonresident Aliens and Foreign Corporations," and Appendix 12).

10.13 Special Provisions for Canadian Professionals and Nurses

The United States–Canada Free Trade Agreement (FTA) facilitates temporary entry into the United States of Canadian citizens who possess at least a bachelor's degree in a specified field of endeavor in the agreement (Schedule 2 to Annex 1502.1 of the FTA) and will be engaged in that endeavor for an employer in the United States. Schedule 2 includes college, university, and seminary teachers as well as research assistants and scientists. Registered nurses are also included on Schedule 2. However, they are not required to possess a bachelor's degree; only a state or provincial license to engage in the profession of registered nursing is required.

To apply for admission to the United States under the FTA, the alien appears at a port of entry into the United States with documentation to prove that he or she is a Canadian citizen, intends to engage in one of the occupations listed on Schedule 2, and meets the criteria to perform the occupation at a professional level. A statement from the prospective employer in the United States outlining the position offered, salary offered, and anticipated length of stay along with diplomas, transcripts, or professional licenses will generally satisfy the immigration officer. A fee is charged.

The alien is admitted in TC-1 status for a maximum period of 1 year. Extensions in increments of 1 year are allowable with no limitation on the number of years one can be in TC-1 status. Spouses and minor Canadian citizen children are admitted for the same duration in a visitor status. Non-Canadian spouses and minor children must apply for a B visa at one of the United States consulates in Canada to accompany a TC-1 but will be allowed to remain with the TC-1 holder as long as the latter is in that status. Clearly, in light of the additional requirements now attached to obtaining an H-1A or H-1B visa, if an employer will be offering a nonimmigrant position to a Canadian citizen, a TC-1 should be considered first. Not all professions are listed on Schedule 2. It is wise to consult the schedule when the question of employing a Canadian citizen arises. [8 CFR 214.6(d)(2)(ii)]

SECTION 11

Other Nonimmigrant Classes

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I-130	Immigrant Petition for Relative, Fiancée, or Orphan
I-539	Application to Extend/Change Nonimmigrant Status
OF-156	Nonimmigrant Visa Application
I-797	Notice of Action
IAP-66	Certificate of Eligibility for Nonimmigrant (J-1) Exchange Visitor Status

11.1 GENERAL

The Act describes 18 general classes of nonimmigrants in Sections 101(a)(15)(A) through (R). One class has five subdivisions, and some classes include dependents who are accompanying or following to join the principal alien.

An applicant for a nonimmigrant visa (other than an H-1, L, or O-1 applicant) is presumed to be an intending immigrant until the applicant establishes to the satisfaction of the consular officer that he or she is entitled to a nonimmigrant visa according to the terms of Section 101(a)(15) of the Act, or as otherwise established by law or treaty. The burden of proof is on the applicant to establish eligibility for the particular nonimmigrant visa for which he or she is applying. [Act 214(b) and 291; 22 CFR 41.11(a)]

Except for nonimmigrants in classes H-1B, H-2B, and H-3 special-education exchange visitor or trainees, there are no limitations on the number of nonimmigrant visas that can be issued in a given year, as there are in the case of immigrant visas. The numerical limits are: H-1B (65,000); H-1B defense project workers (100); H-2B (66,000); and H-3 special-education trainees (50). The numerical limits apply to the principals only. Before a nonimmigrant visa is issued by a U.S. consular officer, and before a change of nonimmigrant status is approved in the United States by an INS officer, the officer must be satisfied that the alien is a bona fide nonimmigrant. The officer must also be satisfied that the alien, if in a specified class, has a residence in his or her home country that he or she has no intention of abandoning, and that the alien intends to enter the United States, or change status, solely for a purpose consistent with the terms of the visa or nonimmigrant status being sought. Aliens in the following classes must satisfy the residence requirement: B, F, H-1B (defense project), H-2, H-3, J, M, O-2, P, and Q.

Employment of a temporary nature is permitted under most nonimmigrant classifications, although it is severely restricted for some classes. "Temporary" may mean a relatively short period of time, or it may mean a period of 5 years or more under certain conditions. Those classes in which employment is not permitted under any circumstances are B-2, C, F-2, D, H-4, L-2, M-2, O-3, P-4, R-2, and transit-without-visa (TWOV). For a complete listing of the classes of nonimmigrants authorized to be employed and the conditions of that employment, see 8 CFR 274a.12. This section of the regulations was modified and expanded as a result of the employer-sanctions provisions of the Immigration Reform and Control Act of 1986.

11.2 NONIMMIGRANT CLASSIFICATIONS LESS COMMONLY ENCOUNTERED IN EDUCATIONAL INSTITUTIONS

11.2.1 A status (diplomat, other government official, and related personnel)

11.2.1.1 A-1 status (diplomat and immediate family)

An A-1 alien is defined as "an ambassador, public minister, or career diplomatic or consular officer who has been accredited by a foreign government ... and the members of the alien's immediate family." [Act 101(a)(15)(A)(i)] A-1 aliens are admitted for the duration of their status in this classification. [8 CFR 214.2(a)(1)]

A foreign government official in A-1 status may be employed only by the foreign government entity. [8 CFR 274a.12(b)(1)] Members of the immediate family residing with an A-1 diplomat may apply for employment permission, using Form I-566. The regulations prescribe strict limitations on the approval of such employment. [8 CFR 214.2(a)(2) and 8 CFR 274a.12(c)(1)] A-1 aliens may enroll in school full or part time while maintaining their A-1 status.

11.2.1.2 A-2 status (other government official and immediate family)

A-2 aliens are defined as "other officials and employees who have been accredited by a foreign government ... and the members of their immediate families." [Act 101(a)(15)(A)(ii)] A-2 aliens are admitted for the duration of their status in this classification. [8 CFR 214.2(a)(1)]

The principal alien in A-2 status may be employed only by the foreign government entity. [8 CFR 274a.12(b)(1)] The A-2 alien's immediate family members who reside with a principal A-2 government official may apply for employment permission under the same terms as those described above for A-1 family members. A-2 government officials and members of immediate family may attend school full or part time while maintaining their A-2 status.

11.2.1.3 A-3 status (attendant, servant, or personal employee of alien classified as A-1 or A-2, and immediate family)

A-3 status is accorded to "attendants, servants, personal employees, and members of their immediate families, of the officials and employees" who are in A-1 or A-2 status. [Act 101(a)(15)(A)(iii)] Aliens in A-3 status are admitted to the United States for an initial period of not more than 3 years and may be granted extensions of temporary stay in increments of not more than 2 years. [8 CFR 214.2(a)(1)]

An alien in A-3 status may be employed only by the foreign government official. The A-3 immediate family members of a foreign government official may not be employed in A-3 classification. A-3 aliens may attend school full or part time while maintaining their A-3 status.

11.2.2 B status (visitor)

A nonimmigrant in B status is described as "an alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he [or she] has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure." [Act 101(a)(15)(B)] B visitors may be admitted to the United States for an initial period of no longer than 1 year and may be granted extensions of stay in increments no longer than 6 months each. [8 CFR 214.2(b)] The B classification is divided into two types, visitors for business (B-1) and visitors for pleasure (B-2). Under certain circumstances a B-2 visa can also be issued to prospective students (see Section 11.2.2.3). In addition, a B-1/B-2 visa is sometimes issued. These types are discussed separately below.

11.2.2.1 B-1 status (visitor for business)

According to federal regulations, the term "business" as used in the definition above refers to

> legitimate activities of a commercial or professional character. It does not include purely local employment or labor for hire.... An alien of distinguished merit and ability seeking to enter the United States temporarily with the idea of performing temporary services of an exceptional nature, requiring such merit and ability, but having no contract or other prearranged employment, may be classified as a ... visitor for business. [22 CFR 41.31(b)]

In its *Foreign Affairs Manual* (FAM), which gives detailed instructions and guidelines to visa-issuing officers, the Department of State has elaborated upon the types of people who can be issued B-1 visas:

- aliens coming to engage in commercial transactions that do not involve gainful employment in the United States, to participate in scientific, educational, professional, or business conventions or conferences, or to undertake independent research
- an alien already employed abroad coming to undertake training who would be classifiable as H-3, but who will continue to receive a salary from the foreign employer and will receive no salary or other remuneration from a U.S. source other than an expense allowance or other reimbursement for expenses incidental to temporary stay.

B-1 visitors cannot legally accept full-time, part-time, or temporary teaching or research positions or other employment for which they are paid by a U.S. institution. B-1 visitors who accept such positions violate the terms of their status and become subject to deportation. However, it is legal for an educational institution to pay a subsistence allowance to a B-1 visitor who performs a temporary service, to reimburse expenses, or to pay an honorarium that does not exceed travel and living costs.

11.2.2.2 B-2 status (visitor for pleasure)

The term "pleasure" as used in Section 101(a)(15)(B) of the Act "refers to legitimate activities of a recreational character, including tourism, amusement, visits with friends or relatives, rest, medical treatment, and activities of a fraternal, social, or service nature." [22 CFR 41.31(b)(2)] A B-2 visitor who is issued a Form I-94 "will be admitted for a minimum period of 6 months, regardless of whether less time is requested, provided the passport is valid for at least 6 months into the future. Exceptions to the minimum 6-month admission may be made only with the specific approval of the district director." [8 CFR 214.2(b)(2)]

A B-2 visa can be issued to an alien who wishes to enter the United States to marry an alien already here in nonimmigrant status.

A Canadian who enters the United States and is not issued a Form I-94 is considered to be in B status (visitor for business or pleasure) with permission to remain in the United States for 6 months.

Aliens in B-2 status are not permitted to accept employment. Applicants for B-2 visas are expected to present the consul with evidence that they have financial support adequate for their contemplated stay in the United States.

11.2.2.3 B-2 status (prospective student)

A B-2 visa can also be issued to a person who (1) intends to become an F-1 student but has not yet chosen a particular school and wishes to visit more than one school before making a selection; (2) has been accepted as an F-1 or M-1 student by a particular U.S. school and has a Form I-20A-B or Form I-20M-N from that school but intends to enter the United States more than 90 days before school opens; (3) has credible evidence of admission to a U.S. school as an F-1 student but does not have a Form I-20A-B; or (4) needs to be in the United States to take an examination or have an interview required for admission to a school as an F-1 student. [OI 8 CFR 248.7(d)] Note that condition [2] applies to prospective M-1 students as well as F-1 students. However, State Department guidelines in the FAM do not provide for the issuance of a prospective-student visa to an M-1 student under any circumstances. The consular officer should write the words "prospective student" on the passport page that bears the B-2 visa. [FAM, vol. 9] This notation is conducive to favorable INS action on the alien's subsequent application to change from B-2 to F-1 or M-1 status. Unfortunately, it is not uncommon for consular officers to neglect to mark the B-2 visas given to prospective students, and in the absence of that notation the alien can experience difficulty in securing a change to student status once inside the United States.

11.2.2.4 B-2 status (prospective exchange visitor)

A B-2 visa can be issued to a prospective exchange visitor who has been accepted for sponsorship by an institution or a sponsoring agency but who has not yet received a Certificate of Eligibility, Form IAP-66, either because the form has yet to reach the prospective exchange visitor or because there are no Forms IAP-66 available from the United States Information Agency.

11.2.2.5 B-1/B-2 status (visitor for business and pleasure)

An alien who plans to visit the United States for both business and pleasure may be granted a B-1/B-2 visa. At the port of entry to the United States an immigration officer will designate either B-1 or B-2 status or both on the Form I-94. An alien in B-1/B-2 status can receive reimbursement for travel and per diem.

11.2.2.6 Visa Waiver Pilot Program

An alien classifiable as a B-1 or B-2 visitor can be admitted without a visa, as long as certain criteria are met, under the terms of the Visa Waiver Pilot Program. Among the criteria are that the alien be classifiable as a B visitor, have a valid passport issued by a designated country, intend to visit the United States for a period not exceeding 90 days, and be in possession of a round-trip transportation ticket that is nonrefundable except in the country of issuance. [8 CFR 217.2] At the time of this writing, the United Kingdom, France, Switzerland, the Federal Republic of Germany, Sweden, Japan, Spain, Italy, Austria, New Zealand, Finland, Belgium, Denmark, Norway, the Netherlands, Iceland, Luxembourg, San Marino, Andorra, Monaco, and Liechtenstein were the only countries in the Visa Waiver Pilot Program. [8 CFR 217.5]

An alien admitted under the Visa Waiver Pilot Program is not eligible for extension of stay, change to another nonimmigrant status, or adjustment of status to that of a permanent resident (except as an immediate relative). [8 CFR 217.3]

11.2.3 C status (alien in transit)

An alien in C status is defined as an alien "in immediate and continuous transit through the United States" (C-1), or an alien who is entitled to pass in transit to and from the United Nations headquarters district and foreign countries under certain provisions of the U.N. headquarters agreement (C-2). An accredited official of a foreign government in transit through the United States is given C-3 status. [Act 101(a)(15)(C); 22 CFR 41.71(a), 22 CFR 41.71(b), and 41.23]

Some aliens in transit can be admitted to the United States without visas under provisions that appear in 8 CFR 214.2(c)(1)

Aliens in C status can be admitted to the United States for periods no longer than 29 days. [8 CFR 214.2(c)(3)] They cannot obtain extensions of stay or changes to another nonimmigrant status except A or G.

An alien in C-1 transit status cannot obtain permission to work. A foreign government official in C-2 or C-3 status may be employed only by the foreign government entity. [8 CFR 274a.12(b)(3)]

11.2.4 D status (crewman)

D status is accorded "an alien crewman serving ... in any capacity required for normal operation and service on board a vessel ... or aircraft, who intends to land temporarily and solely in pursuit of his calling as a crewman." [Act 101(a)(15)(D)] Aliens in D status cannot change to another nonimmigrant status or obtain extension of stay beyond the 29 days normally permitted them. [8 CFR 214.2(d) and 8 CFR 252]

An alien in D status may be employed only in a crewman capacity on the vessel or aircraft of arrival or on a vessel or aircraft of the same transportation company; he or she may not be employed in connection with domestic flights or movements of a vessel or aircraft.

11.2.5 E status (treaty trader, treaty investor, and dependents)

According to the Act, an E visa is given to an alien who is

> entitled to enter the United States under ... a treaty of commerce and navigation between the United States and the foreign state of which he [or she] is a national, and the spouse and children of any such alien if accompanying or following to join him [or her]: (i) solely to carry on substantial trade ... or (ii) solely to develop and direct the operations of an enterprise in which he [or she] has invested, or ... is actively in the process of investing, a substantial amount of capital. [Act 101(a)(15)(E); also see 22 CFR 41.51]

Aliens with E visas can be admitted to the United States for an initial period not exceeding 1 year. They may be granted extension of temporary stay in increments of not more than 2 years by filing Form I-129. [8 CFR 214.2(e)]

An alien in E-1 or E-2 status "may be employed only by the treaty-qualifying company through which the alien attained the status. Employment authorization does not extend to the dependents of the principal treaty trader or treaty investor" except for an alien spouse or unmarried dependent son or daughter of an alien employee of the Coordination Council for North American Affairs. [8 CFR 274a.12(b)(5) and (c)(2)]

11.2.6 G status (representative or employee of international organization and related personnel)

There are five types of G visa. G-1 status is accorded "a designated principal resident representative of a foreign government ... which ... is a member of an international organization ..., accredited resident members of the staff of such representatives, and members of his [or her] or their immediate family." [Act 101(a)(15)(G)(i)]

"Other accredited representatives of ... a foreign government to ... international organizations, and members of their immediate families" qualify for G-2 visas. [Act 101(a)(15)(G)(ii)]

G-3 status is accorded "an alien able to qualify under (i) or (ii) above except for the fact that the government of which such alien is an accredited representative is not recognized de jure by the United States, or that the government of which he or she is an accredited representative is not a member of such international organization, and the members of his or her immediate family." [Act 101(a)(15)(G)(iii)]

"Officers, or employees of such international organizations, and the members of their immediate families" are classified as G-4 aliens. [Act 101(a)(15)(G)(iv)]

G-5 visas are given to "attendants, servants, and personal employees of any such representative, officer, or employee, and the members of the immediate families of such attendants, servants, and personal employees." [Act 101(a)(15)(G)(v)]

An alien in G-5 status is admitted to the United States for an initial period of not more than 3 years and can apply for extensions in increments not to exceed 2 years. Others in G status are admitted for the duration of their status as recognized affiliates of an international organization. [8 CFR 214.2(g)(1)]

Aliens in G status may attend school full or part time while maintaining G status as their principal purpose for being in the United States.

Aliens in G-1, G-2, G-3, or G-4 status or their dependents may be employed only by the foreign government entity or the international organization. [8 CFR 274a.12(b)(7)] Dependents in G-1, G-3, or G-4 status can apply for permission to work under procedures set forth on Form I-566. Aliens in G-5 status may be employed only by the official or representative of the international organization. [8 CFR 274a.12(b)(8)]

11.2.7 I status (representative of foreign information media and immediate family)

An I visa is available, "on the basis of reciprocity," to "an alien who is a bona fide representative of foreign press, radio, film, or other foreign information media, who seeks to enter the United States solely to engage in such vocation" and to the spouse and children of such an alien. [Act 101(a)(15)(I)] Aliens in I status are admitted for duration of status. They may not change employers without first receiving authorization from INS to do so. [8 CFR 214.2(i)] They can attend school full or part time while maintaining I status as their principal purpose of being in the United States.

An alien in I status may be employed only by the sponsoring foreign news agency or bureau. Employment authorization does not extend to the dependents of an information media representative. [8 CFR 274a.12(b)(10)]

11.2.8 K status (fiancé or fiancée of U.S. citizen)

A K visa can be given to "an alien who is the fiancée or fiancé of a citizen of the United States and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within 90 days after entry, and the minor children of such fiancée or fiancé." [Act 101(a)(15)(K)] To receive a K visa, the alien must be the beneficiary of an approved petition filed by a U.S. citizen on Form I-130. It is submitted to the INS regional service center having jurisdiction over the petitioner's place of residence. Approval of the petition is valid for 4 months. Upon entering the United States, the K-1 alien has 90 days in which to marry the U.S. citizen petitioner and to apply for adjustment of status to that of a permanent resident. [8 CFR 214.2(k)] An alien in K status cannot receive an extension of stay or change to another nonimmigrant classification.

An alien in K status is authorized to be employed by any employer in any capacity as evidenced by an INS employment authorization document. [8 CFR 274a.12 (a)(6)]

11.2.9 L status (intracompany transferee and immediate family)

The Act defines an L alien as an alien (and his or her spouse and minor children) who, within 3 years preceding the time of his/her application for admission into the United States, has been employed continuously for 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his [or her] services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge. [Act 101(a)(15)(L)]

L visas are granted on the basis of approved petitions filed with INS on Form I-129 by an employer in the United States. These procedures, along with the regulations concerning the admission, extension of stay, and employment authorization for aliens in L status, are found in 8 CFR 214.2(l). Dependents of L-1 aliens hold L-2 status and are permitted to attend school full or part time while maintaining their L-2 status.

An alien in L status may be admitted to the United States for the period of established need for the alien's services, not to exceed 3 years initially. Extensions of stay may be authorized in increments of up to 2 years, not to exceed a total maximum stay of 7 years. However, for specialized-knowledge L-1 aliens, the total maximum stay cannot exceed 5 years.

A 1-year residence-abroad requirement exists for L aliens who have spent 5 years in the United States in a specialized knowledge capacity or 7 years in a managerial or executive capacity in the United States. In order to qualify for a new L-1 visa (or an H-1 visa), the alien must have resided "and been physically present outside the United States, except for brief visits for business or pleasure, for the immediate prior year. Such visits do not interrupt the 1 year abroad, but do not count towards fulfillment of that requirement." [8 CFR 214.(l)(12)]

An L-1 intracompany transferee may be employed only by the U.S. entity for which the status was obtained. [8 CFR 274a.12(b)(12)] A dependent in L-2 status may not be employed.

11.2.10 N Status (parent or child of certain aliens given special immigrant status)

N status was created by the Immigration Reform and Control Act of 1986. It is given to the family members of aliens who are converted from G status to special immigrants by the IRCA. [Act 101(a)(15)(N)] N aliens are authorized to work as evidenced by an INS employment authorization document. [8 CFR 274a. 12(a)(7) and 8 CFR 214.2(n)]

11.2.11 R status (temporary religious worker)

The R visa was created by the Immigration Act of 1990 for temporary admission of eligible religious workers. It is reserved for an alien in a religious occupation who, for 2 years immediately preceding the time of the application for admission to the United States, has been a member of a religious denomination that has a bona fide religious organization in the United States. Family members may also accompany those religious workers qualified for the R status. The limitation on the length of stay is 5 years. [Act 101(a)(15)(R)]

This visa is for ministers authorized by a recognized religious denomination to conduct religious worship; members of a religious occupation such as liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. In addition, individuals who have taken vows as part of a religious vocation are also qualified, such as nuns, monks, and religious brothers and sisters.

The bona fide religious denomination must qualify for tax exemption by the Internal Revenue Service.

If a visa is required, the alien presents to a U.S. consular officer evidence that he or she will be providing services to a bona fide nonprofit religious organization in the United States. The alien must also provide documentation that he or she is qualified to perform the services required. A description of remuneration to be received including housing, food, and clothing should also be presented. [8 CFR 214.2(r)(3)(viii)] If the alien will enter as a religious professional, at least a bachelor's degree must be presented. [8 CFR 214.2(r)(3)(v)] If no visa is required for entry (for example, for Canadian citizens) then the above information must be presented to an immigration official at the port of entry.

Initial entry may be for up to 3 years with an extension of stay for up to 2 additional years permitted. The extension of stay is filed on Form I-129 with the INS service center having jurisdiction over the place of employment. [8 CFR 214.2(r)(5)and(7)]

Spouse and children of religious workers are entitled to the R-2 classification. R-2 dependents are not permitted to accept employment while in the United States in R-2 status. [8 CFR 214.2(r)(8)]

11.2.12 TC status

The TC classification is for a Canadian citizen who seeks temporary admission to engage in business at a professional level under the U.S.–Canada Free Trade Agreement. [Act 214(e); 8 CFR 214.6] Professional level business activity means an undertaking that requires at least a baccalaureate degree. Application for admission is made at an airport handling international traffic, at a U.S. preclearance/preflight station, or at a U.S. Class A port of entry. No prior petition, labor certification, visa, or prior approval is required.

The alien must present proof of Canadian citizenship; a letter from the prospective employer in the United States or the foreign employer describing the business activity to be engaged in, anticipated length of stay, and salary; copy of professional degree; and license if required. The business activity must be in one of the professions specified in the regulations. Most professions are listed.

A TC alien is admitted with Form I-94 for a period of 1 year and must pay the admission fee specified in 8 CFR 103.7. The alien may be readmitted for the unexpired period authorized on Form I-94 and may apply for extension of stay in 1-year increments. Accompanying or following-to-join spouses and children are admitted in B-2 status. They may not accept employment, but may attend school full or part time.

11.3 EXTENSION OF STAY IN NONIMMIGRANT STATUS

11.3.1 General

Most nonimmigrants (except those in A-1, A-2, F-1, F-2, G-1, G-2, G-3, G-4, and I status) are admitted to the United States for a specific period of time. A nonimmigrant who needs to remain for a longer period in order to accomplish the purpose of his or her stay needs to apply for an extension of stay. A person in C (transit), D (crewman), or K (fiancé or fiancée) status is not eligible for extension of stay; neither are people admitted to the United States under the terms of the Visa Waiver Pilot Program. An eligible nonimmigrant can apply for an extension before the expiration date shown on the Form I-94. INS suggests applying at least 45 days before that date.

11.3.2 Procedures for applying for extension of stay

Application for extension of stay in A-3, B, F-1, G-5, I, J, M-1, and N classification is made on Form I-539 (Application to Extend/Change Nonimmigrant Status). Spouses, and unmarried children under 21 who are in the same status may be included in the extension application. Form I-539 is filed with the local INS office for B, F, J, and M extension or change of status. In all other cases Form I-539 is filed with the appropriate INS service center. The original I-94 must be submitted for extension as B-1 or B-2, F-1 or M-1, or J; for all other extensions submit a copy of the I-94.

To request an extension for an E, H, L, O, P, Q, R, or TC alien, the employer must file Form I-129 (Petition for Nonimmigrant Worker) with the INS service center having jurisdiction over the place of employment. The dependents of such employees file for extension on Form I-539 and attach it to the I-129 petition currently being filed for the employee, or attach the receipt for a previously filed I-129 that is still pending with INS. If the employee's extension has already been approved, attach a copy of the employee's I-94 or a copy of the approval notice to the dependent's I-539.

The required fee must be submitted (see Appendix 1) with a copy of the employee's Form I-94 and copies of the Forms I-94 of any dependents.

In certain cases additional documentation is required. For an A-3 or G-5 extension, attach to the application a copy of the employer's I-94 or approval notice, a letter from the employer describing the employee's duties and stating the intent to employ, and an original Form I-566 certified by the State Department.

For a B-1 or B-2 extension, attach a statement explaining in detail the reasons for the extension; why the extended stay would be temporary; arrangements made to depart; and the effect the extended stay would have on the nonimmigrant's foreign employment and residency.

For an F-1 or M-1 extension, attach the original I-20.

For an I extension, attach a letter from the employer describing the employment and establishing that the employment is as a representative of a qualifying foreign media.

For a J extension, attach an original Form IAP-66.

For an N extension, attach a copy of Form I-551 of the applicant's child or parent.

The extension application should be filed before the authorized stay expires. INS suggests filing at least 45 days prior to expiration. Late filing may be excused if due to extraordinary circumstances. In 1992 INS consolidated the extension-of-stay procedure with the procedure for change in nonimmigrant classification (see Section 11.6.4).

11.3.3 Satisfactory departure

Should a nonimmigrant need "an additional period of less than 30 days beyond the previously authorized stay within which to depart from the United States," such time may be granted without the filing of a formal application when the need for the brief extension is "because of conditions beyond an alien's control or other special circumstances." [8 CFR 214.1(c)(5)] Request for an extension of this kind can be made in person or by means of a letter stating the reasons for the delay in departure and giving the final departure date. The alien's Form I-94 should accompany the letter. If the request is granted, INS will usually mark the Form I-94 with the words "satisfactory departure" and the date by which the departure is expected to take place.

11.4 REENTRY AFTER TEMPORARY DEPARTURE

An alien in any of the nonimmigrant classifications discussed in this section can depart from and reenter the United States with a valid passport and visa. An expired visa can be considered automatically extended (and converted to a different classification if the alien has changed status in the United States) until the date of reentry (thus a visa with a current date is unnecessary) in the case of a nonimmigrant who (1) has maintained nonimmigrant status while in the United States and has a Form I-94 with an expiration date that is in the future; (2) is seeking to reenter the United States after an absence not exceeding 30 days in Canada or Mexico (or, in the case of F or J nonimmigrants, in the adjacent Caribbean islands except Cuba); (3) plans to resume the same nonimmigrant status in the United States within the authorized period of initial admission or extension of stay; (4) has a valid passport; and (5) does not need authorization of admission under Section 212(d)(3) of the Act. [22 CFR 41.112(d)]

11.5 POSSIBILITY FOR STUDY UNDER NONIMMIGRANT CLASSIFICATIONS OTHER THAN STUDENT OR EXCHANGE VISITOR

Aliens in many nonimmigrant classifications can attend school, full or part time, without violating the terms of their status in the United States, assuming they maintain their status otherwise. Nothing prohibits aliens in A, B, E, F-2, G, H, I, J-2, K, L, M-2, N, O, P, Q, or R status from being students. It may be considered a violation if a nonimmigrant who was admitted to the United States for another purpose (e.g., someone in A-1, H-1, I, or L-1 status) undertook studies as his or her principal activity. However, part-time studies (and occasionally short-term, full-time studies) are not inconsistent with these classifications, and full-time studies are not inconsistent with the status of the dependents of people in these classifications. For dependents, see 8 CFR 248.3[e][2].

School officials have no formal immigration-related responsibilities concerning student aliens in these nonstudent classifications.

11.6 CHANGE OF NONIMMIGRANT CLASSIFICATION

11.6.1 General

This section covers procedures and requirements for changing from one nonimmigrant classification to another. It does not cover adjustment of status from that of a nonimmigrant to that of an immigrant (or permanent resident). The latter is discussed in Section 12.

A nonimmigrant in the United States may, subject to limitations specified below, change from one nonimmigrant status to another if he or she has maintained the previous status and is eligible for the new one. [Act 248] Aliens in D, K, and TWOV status are not eligible for any change of status. Those in C status can change only to A or G status. Those in J status who are subject to the 2-year home-country residence requirement can change only to A or G status. J-1 aliens who came for graduate medical education or training cannot change their nonimmigrant status regardless of whether they are or are not subject to the 2-year home-country residence requirement. Aliens admitted under the Visa Waiver Pilot Program cannot change their nonimmigrant status. In addition, M-1s cannot change to F-1 from within the United States.

An applicant for a change of nonimmigrant status must be able to explain satisfactorily why he or she did not originally enter the United States in the status being applied for. For example, a B-2 visitor applying to change to H-1B would need to explain why he or she did not apply for H-1 status before entering the United States and show that he or she came as a bona fide tourist without any prior intention of being employed.

11.6.2 Procedure for applying for change of nonimmigrant status

Application for change of nonimmigrant status is made on Form I-539. The change of status and extension of stay applications have been consolidated (see Section 11.3.2).

Form I-129 is used to petition for H, L, O, P, or Q classification and for extension in or change to such classification. It is also used by an employer to petition for extension of stay or change of status for an alien as an E, R-1, or TC nonimmigrant. A petition is not required to apply for an E or R-1 nonimmigrant visa or for admission as a TC nonimmigrant. However, a petition on Form I-129 is required to apply for change to such status or an extension of stay in such status.

Dependents of prospective E, H, L, O, P, Q, and R employees file for change of status on Form I-539. Dependents of TC aliens cannot change to TC. Such dependents are classified B-2.

Applicants for change to nonimmigrant status as A, B, F, G, I, J, M, or N as dependents should be included in the I-539 application of the principal alien.

The required fee must be submitted (see Appendix 1) with Form I-94 for the applicant and each dependent included in the application.

In certain cases additional documentation is required to apply for change in nonimmigrant status. Dependents of prospective E, H, L, O, P, Q, and R employees must file Form I-539 with the change petition for the prospective employee, or attach a copy of the employee's Form I-94 or approval notice showing the employee has already been granted status to the period requested.

For change to A-3 or G-5, attach a copy of the employer's Form I-94, a letter from the employer describing the applicant's duties and intent to employ the applicant personally, and Form I-566, certified by the State Department to show the employer's continuing accredited diplomatic status. For change to other A or G status, attach State Department–certified Form I-566 to show accredited diplomatic status.

For change to B, attach a statement explaining in detail the reasons for the request, why extension would be temporary, and describing arrangements made to depart and the effect the extended stay would have on the applicant's foreign employment and residency.

For change to F-1 or M-1, attach original Form I-20.

For change to I, attach a letter from the employer describing the employment and establishing that the employment is as a representative of qualifying foreign media.

For change to J-1, attach an original IAP-66.

For change to N, attach a copy of Form I-551 of the applicant's child or parent.

The application for change must be filed before the authorized stay expires. Late filing may be excused if due to extraordinary circumstance.

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The application must be filed with the local INS office for change to B, F, M, or J. For change to all other nonimmigrant classifications, the application must be filed with the appropriate INS service center.

11.6.3 Changes of classification with no application or fee

The policy under which neither a formal application nor a fee was required to apply for certain changes of classification was to be discontinued pursuant to notice published in the *Federal Register* on 2 December 1991. At this writing the notice had not yet been finalized.

11.6.4 Applicant's status while application for change of status is pending

An applicant for change of nonimmigrant status may have to wait many months to learn the outcome of the application. Under these circumstances, aliens often feel compelled to act on the assumption that the application has been approved and to undertake activities appropriate for the new status before INS adjudicates the application. In practice, INS does not normally take any action against a nonimmigrant who has submitted a timely application for change of nonimmigrant status and whose application has not been acted upon by the time the original status expires. The alien may remain in the United States until the application is adjudicated. However, an applicant for change of status to a classification that permits employment may not begin that employment until the change of status is approved. [8 CFR 274a.12 and letter from James A. Puleo, acting associate commissioner of INS, to David Ware, published in *Interpreter Releases*, 21 December 1987, p. 1410]

11.7 CONTROL OF EMPLOYMENT OF ALIENS

The Immigration Reform and Control Act of 1986 requires employers to verify the identity and eligibility for employment of all individuals hired on or after 6 November 1986. For further information about the employer-sanctions provisions of the IRCA, see Section 13.

SECTION 12

Immigrant Status

Lorig S. Boyajian

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I-765	Application for Employment Authorization
I-551	Alien Registration Receipt Card
I-512	Authorization for Parole or Conditional Entry of an Alien into the United States
I-131	Application for Issuance of Permit to Reenter the United States
TAG 656	*Technical Assistance Guide 656*, "Labor Certification"
I-751	Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status
I-752	Application for Waiver of Requirement to File Joint Petition for Removal of Conditions
N-400	Application to File Petition for Naturalization

12.1 DEFINITION

An immigrant is an alien who has been lawfully admitted to the United States for permanent residence. In common usage the word "immigrant" is interchangeable with "permanent resident." Court decisions in recent years have established that immigrants have virtually the same legal rights and civil liberties that are held by U.S. citizens, the major exceptions being the right to vote, to hold some public offices, and to be employed by federal agencies in civil service positions. For example, immigrants are eligible for federally subsidized educational-aid programs. An immigrant has the right to remain in the United States for an indefinite length of time without any need to apply for extensions of stay, work permits, or similar benefits that must be specifically requested by nonimmigrants.

Under the immigration law, immigrants are allowed to accept any kind of employment. No employer may discriminate in the hiring process against immigrants on the basis of national origin. Generally no employer may discriminate in the hiring process against immigrants on the basis of an immigrant's citizenship status unless citizenship status is required in order to comply with a state, local, or federal law. [Act 274B] However, those immigrants who do not apply for citizenship within the 6 months of the date they become eligible will no longer be protected under this prohibition.

Although immigrants are normally entitled to remain in the United States permanently, this privilege can be revoked and they can be deported under certain circumstances, even after naturalization. Grounds for deportation of an immigrant include fraudulent entry to the United States, commission or conviction of certain crimes involving moral turpitude (including the possession of illegal substances), and determination that the alien was not eligible for immigrant status at the time it was acquired. Thus, even though immigrants are much more secure in their right to remain in the United States than are nonimmigrants, they are not completely safe from deportation.

Immigrants are never compelled to become U.S. citizens and may remain in immigrant status for an indefinite length of time. They become eligible to apply for citizenship through naturalization, if they choose, after they have resided in the United States as permanent residents for 5 years, or for 3 years if they have been married to a U.S. citizen for 3 years. There are also reduced waiting periods in other circumstances such as service in the U.S. military or employment abroad with the U.S. government. Their right to retain their prior citizenship as well as their newly acquired U.S. citizenship depends largely on the laws of their former country. Although U.S. law does not recognize the right of naturalized citizens to retain another citizenship, the U.S. government will not move to revoke U.S. citizenship unless the individual commits an act deemed inherently expatriating (such as service with military forces hostile to the United States) or accompanied by a specific intent to expatriate.

12.2 THE IMMIGRATION AND NATIONALITY ACT AS AMENDED

The selection and screening of immigrants to the United States is governed by the Immigration and Nationality Act of 1952, as amended. Major amendments were passed by Congress in 1965 (PL 89-236), 1976 (PL 94-571), 1980 (PL 96-212), 1986 (PL 99-603) and 1990 (PL 101-649). The 1965 amendment established a comprehensive new preference system for the Eastern Hemisphere, eliminated a number of discriminatory provisions against the natives of certain countries, and imposed for the first time a numerical limitation on immigrants from the Western Hemisphere. The 1976 amendment applied the preference system to the Western Hemisphere. The Refugee Act of 1980 (PL 96-212) repealed the seventh preference classification and established a worldwide ceiling of 270,000 preference immigrant visas per year. The Immigration Reform and Control Act of 1986 (PL 99-603) introduced a number of changes, including the marriage-fraud amendments, a legalization program for certain classes of illegal aliens, and an employer-sanctions program requiring that all employers verify the work eligibility of every worker hired and prohibiting the hiring of aliens unauthorized to work. The Immigration Act of 1990 (PL 101-649) and subsequent Miscellaneous and Technical Amendments of 1991 (PL 102-232), universally recognized as the most sweeping and far-reaching reform of this country's legal immigration system in 38 years, include a complete revision of both the family sponsored and employment-based immigration provisions. This section of the *Manual* is based on the Act as changed by these amendments.

12.3 OBTAINING AN IMMIGRANT VISA ABROAD OR APPLYING FOR IMMIGRANT STATUS IN THE UNITED STATES

The Act provides for two distinct avenues for becoming an immigrant, or permanent resident, of the United States. One avenue is to apply for an immigrant visa at a U.S. consular post abroad and to enter the United States as an immigrant. The other avenue, and the one most often used for nonimmigrants currently in the United States, is to apply for adjustment of status—a change from nonimmigrant to immigrant status—while in the United States. The latter approach has many variations, but most involve application for adjustment of status to that of permanent resident under Section 245 of the Act. Regardless of the avenue followed—application for an immigrant visa abroad or adjustment of status in the

United States—the ultimate result is immigrant, or permanent-resident, status for the applicant (see Sections 12.6 and 12.7).

12.4 THE SELECTION SYSTEM

The selection of persons eligible to become immigrants involves qualitative standards and numerical limitations, both of which are governed by complex systems of allocating immigrant visa numbers by country or dependent area and by a series of preference classifications. These systems are designed to regulate how many and what kinds of people may become immigrants.

12.4.1 Qualitative standards

The intent of establishing qualitative standards is to determine what kinds of applicants may become immigrants. Three kinds of persons constitute the major portion of those who qualify for immigrant status, although the Immigration Act of 1990 established a diversity program that will allow additional immigrants into the United States each year based on their national origin.

12.4.1.1 Applicants who have a family relationship to a U.S. citizen or permanent resident

A basic objective of the law is to provide for the uniting of families. Since a U.S. citizen or permanent resident has a right to reside in the United States, certain members of his or her family are given preference as immigrant applicants in order to permit the family to be together. Applicants who have family members who are U.S. citizens or permanent residents may fall into the classifications known as immediate relatives and family-based first, second, third, and fourth preferences (see Sections 12.4.2.1.1 and 12.4.3.1).

12.4.1.2 Applicants whose services are required by an employer in the United States

A second objective of the law is to attract to the United States individuals whose occupational skills are in short supply here. They are assigned employment-based preference classifications, some of which require labor certification (see Section 12.5), a process that among other things affirms that their occupational skills are, indeed, in short supply in the United States.

12.4.1.3 Refugees

The Refugee Act of 1980 defines a refugee as any person "who is unable or unwilling to return [to his or her country of nationality] because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." [Act 101(a)42] For further information on the admission of aliens to the United States as refugees and their adjustment to permanent-resident status, see Section 13.6.

12.4.1.4 Aliens in unlawful status

Aliens who have continuously resided in the United States in unlawful status since before 1 January 1982 were to have applied for temporary-resident status between 5 May 1987 and 4 May 1988 by presenting documentation pertaining to the length of their residence in this country. Only aliens who entered the United States without inspection and those whose violation of a nonimmigrant status occurred before 1 January 1982 by the expiration of their authorized stays or by commission of a violation that was known to the U.S. government before that date are made eligible for this "legalization" process. After 18 months in temporary-resident status, such aliens should have applied for adjustment to permanent residence. [Act 245A] Aliens in legal or illegal status who have continuously resided in the United States since before 1 January 1972 are eligible to apply for permanent resident status under the registry provisions of the Act.

12.4.2 Numerical limitations

Numerical limitations are designed to control the number of people who may become immigrants each year and to place limits, within the total, on the number from each independent country and dependent area. This system of numerical limitations is different from the quota system that was in effect until 1965.

12.4.2.1 Applicants who are not subject to numerical limitations

Not all would-be immigrants are subject to numerical limitations. Those who are not subject to these limitations are eligible for immigrant status immediately upon establishing their qualifications. They do not have to obtain an immigrant visa number under the preference system, and they are subject only to the qualitative standards established by the law. Applicants who are not subject to numerical limitations are described below.

12.4.2.1.1 Immediate relatives of U.S. citizens. An immediate relative is defined as (1) the spouse of a U.S. citizen; or (2) the unmarried minor child (under 21 years of age) of a U.S. citizen; or (3) the parent of a U.S. citizen, provided, in the case of a parent, that the U.S. citizen is at least 21 years of age (also see Section 12.7.4). [Act 201(b)]

12.4.2.1.2 Special immigrants. Special immigrants include, among others, certain returning U.S. residents, former citizens, certain foreign medical graduates, longtime U.S. government employees abroad, and certain longtime residents of the United States. [Act 101(a)(27)]

12.4.2.2 Applicants who are subject to numerical limitations

All applicants for immigrant visas other than those described in the immediately preceding sections are subject to annual numerical controls, the fiscal year being 1 October to 30 September. As a result, an immigrant visa is not always immediately available to an alien who has qualified to apply for immigrant status (see Section 12.8.2).

The Immigration Act of 1990 increased the numerical limitation placed upon the selection system for worldwide immigration from 270,000 to 675,000 per year [Act 201(c) and (d) and (e)], the bulk of the increase being allocated to employment-based immigrant visas. Subject to certain exceptions, the total number of immigrant visas made available to natives of any single country will be 7 percent (or 2 percent for a dependent area except Hong Kong) of the total number of such visas available each year. [Act 202] Usually, a person is considered a native of the country of his or her birth (as opposed to country of citizenship or residence) and is said to be "chargeable" to that country's allocation of immigrant visas. However, under rules of "alternate chargeability," certain applicants may be able to qualify under the numerical limitation of the country of birth of their spouse or either parent. [Act 202(b); 22 CFR 42.12]

12.4.3 The preference system

Generally, to qualify for an immigrant visa, an individual must be eligible through one of the several available "preferences" outlined below. The preference system is designed to regulate what kinds of people may become permanent residents. All applicants for immigrant visas who are subject to the preference system are subject to numerical limitations (see Section 12.8.2).

An alien may qualify for more than one preference classification and may use the classification offering earliest availability of an immigrant visa. For example, the spouse of a permanent resident (second preference) may also be the sibling of a U.S. citizen (fourth preference) and/or the married son or daughter of a U.S. citizen (third preference). Any or all of the relatives may file petitions on behalf of the alien, and the alien may use the preference in which visa numbers become available first. Similarly, the beneficiary of a relative petition may be simultaneously the beneficiary of an employment-based preference petition based on profession or occupation.

If an independent country or dependent area uses all of its maximum number of immigrant visa numbers in any fiscal year, in the following fiscal year the percentages allocated to each of the preference classifications will be applied to the country limitation as well as to the worldwide limitation. [Act 202(e)] This provision was added by the amendment of 1976 and is designed to assure that at least some visa numbers will be available in each preference classification for each country if that country used its entire allocation of visas in the previous year (see Section 12.8.2).

12.4.3.1 Preference classification based on family-sponsored immigration

Section 203(a) of the Act specifies the following preference classifications under family-sponsored immigration. A labor certification is not required for family-based immigrant visas.

12.4.3.1.1 First family-based preference. Up to 23,400, plus any unused visas from the other family-based preferences of the annual numerical limitation, are assigned to "qualified immigrants who are the unmarried sons or daughters of citizens of the United States." [Act 203(a)(1)] Unmarried minor children of U.S. citizens are considered as immediate relatives and are not subject to numerical limitations. Therefore, this preference classification applies to unmarried sons or daughters who are 21 years of age or over.

12.4.3.1.2 Second family-based preference. Each year 114,200, plus any visa numbers not used in the first preference classification, are assigned to "qualified immigrants who are the spouses, unmarried sons, or unmarried daughters" of a permanent resident. [Act 203(a)(2)] The Act of 1990 divided this preference classification in two groups. Second Preference A is for spouses and children under the age of 21 of a permanent resident; Second Preference B is for unmarried sons and daughters age 21 or over of a permanent resident. Second Preference A applicants will have preference in the total amount of visas allocated inasmuch as at least 77 percent of the 114,200 visa numbers must be allocated to this subcategory. Thus, ultimately, it will take longer for adult, single children of permanent residents to obtain permanent resident status than it will take a spouse or minor child.

12.4.3.1.3 Third family-based preference. Up to 23,400 of the annual numerical limitation, plus any unused visas from the first two preferences, are assigned to married sons and daughters of United States citizens.

12.4.3.1.4 Fourth family-based preference. Up to 65,000 of the annual numerical limitation, plus any visa numbers not used in the first three preference classifications, are assigned to brothers and sisters of U.S. citizens. The citizen must be at least 21 years old to petition on behalf of a brother or sister. Approximately 5 million individuals are waiting in line for a visa based on this preference. An individual who has a petition filed on his behalf today may have to wait for as long as 20 years to obtain permanent resident status under this preference.

12.4.3.1.5 Family-based immigrant visa petitions approved prior to 1 October 1991. Under the law as it existed prior to 1 October 1991, petitions filed by U.S. citizens on behalf of married sons or daughters were approved under the fourth preference classification.

Petitions filed on behalf of brothers and sisters were approved under the fifth preference classification. In the event that an individual has not received permanent-resident status prior to 1 October 1991 his or her petition will be automatically converted to the new third or fourth preference classification; at the time of the eventual interview for permanent residence, he or she will be given the appropriate preference status according to the new law.

12.4.3.2 *Preference classification based on employment-sponsored immigration*

Section 203(b) of the Act as amended in 1990 dropped the previous third and sixth preference employment-based classifications, created five new classifications, and increased the employment-based annual numerical limitation on employment-based immigrants from 54,000 to at least 140,000 per year. A labor certification is generally required; however, there are now many more exceptions to this general rule; these are discussed below.

12.4.3.2.1 First employment-based preference (priority workers). Up to 40,000 visas are assigned to aliens of extraordinary ability, outstanding professors and researchers, and certain multinational executives and managers. A labor certification is not required for an alien classified under the first employment-based preference. Form I-140 with supporting documentation must be submitted to the regional service center covering the area of intended employment. Each priority-worker category is detailed below.

Aliens with extraordinary ability. This classification is reserved for aliens who have sustained national or international acclaim in the sciences, arts, educations, business, or athletics. [Act 203(b)(i)(A)] The individual's accomplishments must have been recognized in his or her field by extensive documentation. The legislative history of this classification indicates that Congress intended a very high standard for aliens in the category and that it is for "one of that small percentage who have risen to the very top of the field of endeavor." [8 CFR 204.5(h)(2)]. The individual does not require an offer of employment, but evidence must be submitted to INS to show that he or she is coming to continue work in the area of exceptional ability and that entry into the United States will substantially benefit the United States. [8 CFR 204.5 (h)(5)]

A petition for an alien of extraordinary ability must be accompanied by evidence to prove national or international acclaim and that his or her achievements have been recognized. Evidence of a major, internationally recognized award, such as an Academy Award or a Nobel Prize, is sufficient to prove extraordinary ability. In the absence of such an award, evidence of at least three of the following is also acceptable: (1) the receipt of lesser internationally or nationally recognized prizes or awards of excellence in the field; (2) membership in associations in the field that require outstanding achievements of their members; (3) published material in professional or major trade publications or media about the individual, relating to his or her work in the field; (4) participation on a panel, or individually, as a judge of the work of others in the field; (5) original scientific, scholarly, artistic, athletic or business-related contributions of major significance in the field; (6) authorship of scholarly articles in professional journals or other major media; (7) evidence of the display of work in the field at artistic exhibitions or showcases; (8) evidence that the individual has commanded a high salary or other significantly high remuneration for services in relation to others in the field; (9) evidence that the individual has performed in a leading or critical role for organizations that have a distinguished reputation; or (10) evidence of commercial success in the performing arts. If the above standards do not readily apply to the individual's occupation, comparable evidence is required.

Outstanding professors and researchers. This classification of individuals within the priority worker category is assigned to professors and researchers who are recognized internationally as being outstanding in a specific academic area, have at least 3 years of teaching and/or research experience in the academic area (such experience may include research or teaching while working toward an advanced degree only if the research is recognized within the academic field as outstanding or if the teaching duties entailed full responsibility for the class taught), and will be employed in a tenured or tenure-track teaching position or a permanent research position with a university or institution of higher learning. An individual may also apply under this category if he or she will be employed in a comparable research position with a private or nonprofit organization so long as such organization employs at least three full-time individuals in research and it has achieved documented accomplishments in an academic field. [8 CFR 204.5(i); Act 203(b)(1)(B)]

An I-140 petition filed under this category must include documentation evidencing at least 3 years of research or teaching experience in the form of letters detailing previous employment experience from prior employers, including exact dates of employment and a detailed job description of the duties performed as well as evidence that the individual is recognized as internationally outstanding in the specific academic area by providing documentation of at least two of the following: (1) receipt of major prizes or awards for outstanding achievement; (2) membership in associations in the academic field that require outstanding achievements of their members; (3) published material in professional publications written by others about the individual's work in the field; (4) participation on a panel, or, individually, as the judge of the work of others in the field;

(5) authorship of scholarly books or articles in the field in scholarly journals with international circulation; or (6) evidence of original scientific or scholarly research contributions to the academic field.

Multinational executives and managers who have been employed outside of the United States for at least 1 year within the 3 years immediately preceding entry into the United States and are or will be employed in an executive or managerial capacity for that same employer or its subsidiary, branch, or affiliate in the United States are also eligible to apply for priority worker status. [8 CFR 204.5(j)]

12.4.3.2.2 Second employment-based preference (members of the professions holding advanced degrees or aliens of exceptional ability). Up to 40,000 visas, plus any unused visa numbers from the first employment-based preference, are assigned to this classification of immigrants. Although a labor certification is required, it may be waived when there is evidence that the occupation for which certification will be sought is one of the shortage occupations within the Labor Market Information Pilot Program (see Section 12.5.4.1).

To be classified as a member of the professions holding an advanced degree, the position must be professional and the individual must hold at least a master's degree or its equivalent. The equivalent of a master's degree is deemed to be a bachelor's degree or foreign equivalent followed by at least 5 years of progressive experience in the specialty. "If a doctoral degree is customarily required by the specialty, the alien must have a United State doctorate or a foreign equivalent degree." [8 CFR 204.5(k)(2)] Clearly, the application must show that an advanced degree is required for the job opportunity.

To be classified as an individual of exceptional ability in the sciences, arts, or business, one must possess a degree of expertise significantly above that ordinarily encountered and it must be evidenced by at least three of the following: (1) academic records in the area of exceptional ability; (2) letters from current or former employers showing that the person has at least 10 years of full time experience in the occupation; (3) a license to practice the profession or certification for the occupation; (4) evidence that the person has commanded a high salary; (5) membership in professional associations; or (6) recognition for achievements and significant contributions to the industry or field by peers or organizations.

INS may waive the job offer and labor-certification requirement for an individual in this preference category if the exemption would be in the national interest. [8 CFR 204.5(k)(4)] National interest is not defined, and the obligation to demonstrate that a waiver would be in the national interest rests with the applicant.

12.4.3.2.3 Third employment-based preference (skilled workers, professionals, and "other" [unskilled] workers). Up to 40,000 visas, plus any unused visas from the prior two classifications, are assigned to this classification of immigrants. Skilled workers are defined as individuals who are capable "of performing skilled labor requiring at least 2 years of training or experience." [8 CFR 204.5(l)(2)] Professionals are those who hold a bachelor's degree and who are members of the professions. Other workers are those who will be performing unskilled labor, that is, individuals who will fill an occupation that requires less than 2 years of training or experience. Only 10,000 of the more than 40,000 visas allocated to this preference are assigned to individuals falling into the "other worker" category. It is anticipated that those falling into the latter category will have to wait up to 6 or more years to obtain permanent residence. [8 CFR 204.5(l)] Although labor certification is required, it may be waived when there is evidence that the occupation for which certification is being sought is one of the shortage occupations within the Labor Market Information Pilot Program (see Section 12.5.4.1).

12.4.3.2.4 Fourth employment-based preference (religious workers). Five thousand immigrant visas are reserved for special immigrant religious workers under the Act 101(a)(27)(C). To qualify, an alien must have been a member of the religious denomination for at least 2 years immediately preceding application, and this denomination must have a bona fide tax-exempt, nonprofit, religious organization in the United States. [8 CFR 204.5(m)] A religious worker must be seeking to enter the United States to be a minister of religion or to work for the organization in a religious capacity.

12.4.3.2.5 Fifth employment-based preference (employment-creation immigration: investors). Ten thousand visas are assigned annually to aliens who have invested in or are in the process of investing at least $1 million in a new commercial enterprise in the United States ($500,000 in a rural area) that will create full-time employment for at least 10 U.S. workers. [8 CFR 204.6]

12.4.3.2.6 Diversity Transition Program (AA-1). The Act of 1990 makes available 40,000 immigrant visas per year for the 3 fiscal years commencing 1 October 1991 to individuals born in certain countries . To obtain permanent residence through this channel one must be generally admissible as an immigrant (for example, not a criminal), must have a firm commitment for employment in the United States for at least 1 year from the time of entry to the United States with permanent residence and must have been born in one of 36 countries, including Canada, that were "adversely affected" by the Act as amended in 1965. Additionally, J-1 exchange visitors subject to the 2-year foreign residency requirement are exempt from the foreign residency requirement if permanent residence is obtained through the diversity transition program. Similarly, the exclusion provisions relating to unqualified doctors [Act 212(a)(5)(B)] do not apply to those who obtain permanent residence through this program. The application procedure for registration in this program, as set by the Department of State, requires mailing a sheet of paper to a post-office box in the Washington, D.C., area during a specified window of time in the month of October. The following information must be typed on the sheet: the applicant's name, date and place of birth (as well as those of a spouse or any children), mailing address, and U.S. consular office to which the visa registration should be sent if the applicant is picked. An applicant may mail one application only and applicants will be selected randomly. The first 50,000 selected and registered will be notified. When all 40,000 immigrant visas have been issued, the program for the year will end. In order to be considered in the next year's pool of applicants, an individual must apply again as outlined above. The same post-office box may not be used each year. For more information regarding the AA-1 immigrant visa program see 22 CFR 43.

The Act of 1990 also created a permanent diversity program that, commencing October 1994, will allocate up to 55,000 immigrant visas to applicants from certain countries and regions that have been determined to be "low admission" regions and who possess at least a high school education or at least 2 years of work experience in a skilled job within 5 years prior to application. Regulations have not yet been drafted concerning the permanent diversity provisions.

12.4.3.2.7 Employment-based (third and sixth preference) visa petitions filed prior to 1 October 1991. All third preference I-140 petitions filed before 1 October 1991 have been automatically converted to the second employment-based preference. All sixth preference I-140 petitions filed prior to 1 October 1991 have been automatically converted to the third employment-based preference. Those sixth preference petitions for occupations requiring less than 2 years of education, training or experience have been converted into the "other worker" category with the third employment-based preference. Entitlement to the automatic conversion will expire 2 years after the date that the priority date has been reached. [137 *Cong. Rec.* H6906, daily ed., 26 September 1991] Apparently, after that time, the petition will lapse and it will be necessary to file another immigrant visa petition from the beginning.

12.4.3.3 Dependents

Once eligibility for one of the preference classifications is established for the principal alien, his or her spouse and/or unmarried minor children who are accompanying or following to join are assigned the same preference or nonpreference classification. Separate immigrant visa petitions do not have to be filed for these dependents unless they are otherwise entitled to an immigrant status and the immediate issuance of a visa. [Act 203(a)(8); 8 CFR 204.1(a)] Like the principal alien, however, they are required to submit documents such as birth certificates and to undergo medical examinations to establish eligibility for derivative immigrant status. A spouse or stepchild acquired by the principal alien after he or she becomes a permanent resident do not qualify as "accompanying" or "following to join." These dependents need to have separate visa petitions filed on their behalf and will be subject to the usual numerical limitations. This may result in the separation of family members until visa numbers become available.

Further, no dependents are included in immediate relatives' cases. Thus, if a citizen marries a nonresident who has children under the age of 21, application must be made for the spouse and each child separately. Likewise, if a citizen makes application for his or her mother, who has children under the age of 21, the children will not be able to accompany her; she will have to file separate I-130 petitions on their behalf under the second family-based preference.

12.4.4 Ineligibility for immigrant status

In addition to specifying qualitative standards and numerical limitations for establishing eligibility for immigrant status, the Act also lists a number of specific grounds for ineligibility for such status.

12.4.4.1 Grounds for exclusion

Section 212(a)(1-9) of the Act lists several grounds for ineligibility for visas and admission including drug abuse and addiction, communicable disease of public significance, and certain physical or mental deficiencies. Those who are likely to become public charges or have a serious criminal record (including those who have been convicted of a violation of any law relating to illegal possession of or traffic in narcotic drugs or more than 1 ounce of marijuana) may also be excluded, as may aliens engaged in terrorist activity, members of a communist party (with many broad exceptions), persons who participated in persecution under the Nazi government of Germany, and smugglers of illegal aliens. Lastly, aliens who arrived in the United States in an improper or illegal manner or who were previously excluded or deported from the United States within the past 5 years (or within 20 years in the case of an alien convicted of an aggravated felony), as well as aliens who lack proper documentation and aliens who are ultimately ineligible for U.S. citizenship may also be excluded under the Act.

12.4.4.2 Foreign medical doctors

In the Health Professions Educational Assistance Act of 1976 (PL 94-484), Congress declared that there was no longer a shortage of medical doctors in the United States and expressed concern over the quality of health care provided by medical doctors who had obtained their training outside the United States. PL 94-484 added an employment-based ground for ineligibility for immigrant status by declaring ineligible

> an alien who is a graduate of a medical school not accredited by a body or bodies approved for the purpose by the secretary of education (regardless of whether such school of medicine is in the United States) and who is coming to the United States principally to perform services as members of the medical profession unless the alien (i) has passed Parts I and II of the National Board of Medical Examiners [NBME] examination (or an equivalent examination as determined by the secretary of Health and Human Services) and (ii) is competent in oral and written English. [Act 212(a)(5)(B)]

Until July 1992, the secretary of Health and Human Services had determined that the Foreign Medical Graduate Examination in the Medical Sciences (FMGEMS) (see Section 12.4.4.2.1) is the equivalent for visa purposes of Parts I and II of the NBME examination. Therefore, with the exception of those medical doctors specified in Section 12.4.4.2.3, all medical doctors applying for immigrant status on the basis of their profession needed to pass the NBMEE (Parts I and II) or the FMGEMS. On 17 July 1992, the HHS announced that Steps 1 and 2 of the United States Medical Licensing Examination (USMLE) were the equivalent to and would replace the FMGEMS, which will be discontinued in the near future. The USMLE will be phased in during 1992, and both the FMGEMS and NBME will be discontinued by mid-1993.

The secretary of education has approved the Liaison Committee on Medical Education as the appropriate body to accredit medical schools. Only schools in the United States and Canada meet the accreditation requirements.

12.4.4.2.1 The Foreign Medical Graduate Examination in the Medical Sciences (FMGEMS). The FMGEMS is administered by the Educational Commission for Foreign Medical Graduates (ECFMG) and, until now, had been the only examination acceptable as equivalent to Parts I and II of the NBME examination for visa purposes. An earlier examination, the Visa Qualifying Examination (VQE), was administered by the ECFMG for the first time in September 1977 and for the last time in September 1983. Scores on the VQE are still valid, and anyone who has passed it need not take the FMGEMS. A much older examination, the ECFMG, is named for the organization that designed it; the ECFMG has not administered this examination since February 1984. The ECFMG examination has never been considered to be equivalent to Parts I and II of the NBME examination for visa purposes. The ECFMG publishes a booklet on the FMGEMS. The booklet can be obtained from the commission at 3624 Market St., Philadelphia, PA 19104; telephone (215) 386-5900.

12.4.4.2.2 ECFMG certification. Foreign medical doctors who wish to enter the United States either permanently or temporarily for medical practice (including graduate medical training on J-1 visas) must not only pass the licensure examination but also obtain certification by the ECFMG as a prerequisite for licensing in most states. Further information on these examinations and requirements can be obtained from the commission in Philadelphia.

12.4.4.2.3 Exemption from the NBME, Parts I and II, FMGEMS, or USMLE. Foreign medical doctors applying for immigrant status are not required to pass the NBME examination or the FMGEMS if they fall into one of the following categories:

1. Alien medical doctors who were, on 9 January 1978, fully and permanently licensed to practice medicine in a state and who were practicing medicine in a state on that date. They are considered to have passed Parts I and II of the NBME examination. [PL 95-83, Section 602(a), technical amendment as a note to 8 U.S.C 1182] The term "state" means any state of the United States plus the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands, as defined in Section 101(a)(36) of the Act.

2. Alien doctors who graduated from a school accredited by a body approved by the secretary of education. In effect, this means aliens of any nationality who have graduated from a U.S. or Canadian medical school.

3. Alien medical doctors who are considered to be "of national or international renown" in the field of medicine. [Act 101(a)(41)] The departments of State and Justice are responsible for developing guidelines to determine whether a foreign medical doctor is "of national or international renown." These guidelines have yet to be issued, but only those alien doctors who have made outstanding contributions in their fields of medical specialization can expect to be so designated.

4. Those physicians who will have no patient-care responsibilities and will not, therefore, be engaged in the practice of medicine. Most common in this category are teachers and researchers in the basic sciences who are engaged in classroom teaching and laboratory research only.

5. Those medical doctors who are applying for immigrant status on the basis of a family relationship to a U.S. citizen or permanent resident (immediate relative, first, second, third or fourth preference) rather than on the basis of their profession. In order to practice medicine in the United States, however, it would usually be necessary for such a medical doctor to pass an acceptable exam for and obtain ECFMG certification in order to secure state licensure.

12.4.4.3 Exchange visitors subject to the 2-year home-country residence requirement

Persons who hold or held J-1 or J-2 exchange-visitor status and who are subject to the 2-year home-country residence requirement of Section 212(e) of the Act are not eligible to become immigrants until they have either satisfied that requirement or have had it waived (see Section 9).

12.4.4.4 Aliens admitted under the Visa Waiver Pilot Program

Unless he or she is an immediate relative of a United States citizen (see Section 12.4.2.1.1), an alien admitted to the United States as a Visa Waiver Pilot Program visitor (see Section 11.2.2.6) is ineligible for adjustment of status. [8 CFR 245.1(b)(15)]

12.4.5 Procedures for establishing qualifications for immigrant status

Aliens may establish their qualifications for immigrant status through a petition filed with INS or with a consular office, and/or through receiving a labor certification or establishing that labor certification is not required in their cases.

12.4.5.1 Petitions for family members

Aliens who qualify for immigrant status on the basis of family relationship to a U.S. citizen or permanent resident (immediate relatives, first, second, third, and fourth preferences) establish that qualification by filing a Petition for Alien Relative, Form I-130. The petition is filed by the U.S. citizen or permanent-resident family member (the petitioner), on behalf of the alien (the beneficiary). If the petitioner is residing in the United States and the beneficiary is not, the petition is filed with the regional service center having jurisdiction over the petitioner's place of residence. If the beneficiary is also living in the United States, the petition can be filed with the INS regional service center having jurisdiction over the petitioner's or the beneficiary's place of residence. If an immigrant visa is immediately available in the appropriate classification, such as in the case of an immediate relative, the petition may be filed with the INS district office that has jurisdiction over the beneficiary's place of residence along with an application for adjustment of status to permanent resident. At the same time, the beneficiary may apply for work authorization and will receive an employment authorization card. This will allow him to work during the period the application for permanent residence is pending with INS. If an immigrant visa is not immediately available at the time of filing the I-130 petition, as in second and fourth preference petitions, the petition must be filed alone. However, if at a later date visas become available under that category and the beneficiary is in legal nonimmigrant status he may still apply for adjustment of status at the local INS office.

If the petitioner is residing abroad, the petition is filed with an INS office abroad or, in certain cases, with a U.S. consular office. [8 CFR 204.1] A petitioner living abroad should consult the nearest American consulate to learn the location of the consular office or foreign office of INS designated to act on the petition. Instructions for completing and filing the petition are included on the Form I-130. A fee is required. Labor certification is not required.

12.4.5.2 Petitions for employment-based immigrants

Aliens who qualify for immigrant status on the basis of their profession or occupation establish that qualification by filing Form I-140, Petition for Immigrant Worker, or I-360, Petition for Special Immigrants.

A Form I-140 petition with accompanying labor certification, if applicable, and supporting documentation or evidence must be signed by the petitioner (employer) and filed with the INS regional service center having jurisdiction over the intended place of employment of the beneficiary (alien worker). I-140 petitions may no longer be filed jointly with an application for adjustment of status to permanent resident at the local district office having jurisdiction over the beneficiary, even if immigrant visas are immediately available in the category for which preference status is sought.

Instructions for completing and filing the petition, as well as for the documentation required, are included on the Form I-140. A fee is assessed. Once Form I-140 is approved, steps for applying for permanent residence status need to be taken (see below and Sections 12.6 and 12.7).

12.4.5.3 Priority dates

The priority date is the date on which the alien is considered to have entered the waiting line for an immigrant visa. The priority date of any petition filed for classification under all family-based and most employment-based preference petitions is the date the completed, signed petition and supporting documentation (including the fee) are properly filed with INS. [8 CFR 204.5 and 204.6] However, if a labor certification is a prerequisite to filing an employment-based immigrant visa petition, the priority date is the day the application for alien labor certification is filed with the local state labor department.

Under the law as it existed before October 1990, the waiting periods for employment-based immigration were anywhere from 2 to 5 years. Inasmuch as the Act of 1990 increased the annual allotment of immigrant visa numbers for employment-based immigration from 54,000 to 140,000, it is anticipated that the waiting period for eligibility to apply for permanent residence will entail only the normal processing times at the labor department and at INS. Once an I-140 petition is approved, eligibility for permanent residence should generally be current. See Sections 12.6 and 12.7 for filing for permanent residence status.

12.5 LABOR CERTIFICATION

12.5.1 Definition and purpose

A labor certification is a determination and certification by the U.S. Department of Labor (DOL) that "(A) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or arts), and available" to fill positions of the kind being offered a specific alien, and "(B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed." [Act 212(a)(14); 20 CFR 656] The goals of the labor-certification process are to assure that aliens seeking employment in the United States will not be taking jobs for which qualified U.S. citizens or permanent residents are available and will not be employed under conditions less favorable than those under which qualified U.S. citizens or permanent residents would be employed, and thus will not adversely affect the wages and working conditions of U.S. workers.

Anyone working with labor-certification applications is well advised to study *Technical Assistance Guide 656* (1981) issued by the Department of Labor (DOL) (see Section 12.5.6).

12.5.2 Applicability of the labor-certification requirement

Generally, labor certifications are required of prospective immigrants who are coming to the United States for the purpose of entering the labor force. Aliens who require a labor certification are generally those who apply for employment-based second and third preference classification. [Act 212(a)(14)] A labor certification is not required for petitions filed based on a family relationship, application for refugee status, and certain other prospective immigrants such as priority workers and special immigrants.

12.5.3 Schedules A and B

To avoid having to adjudicate every labor-certification application on a case-by-case basis, DOL has determined that there are some occupations in which a shortage of qualified workers exists. The list of these occupations is known as Schedule A. DOL has also determined that a sufficient number of workers is available for certain other occupations. The list of these occupations is known as Schedule B. Aliens in occupations listed on Schedule B are not eligible for labor certification unless a prospective employer can establish that qualified U.S. workers are not available for a particular job opening. Schedule B includes such workers as janitors, parking lot attendants, and elevator operators. Schedules A and B appear in 20 CFR 656.11. Labor certification applications involving occupations not on Schedules A or B are discussed below in Section 12.5.4.

12.5.3.1 Schedule A

Since the Act of 1990 established new avenues for establishing eligibility for permanent residence based on employment, DOL has essentially reduced the groups of occupations on Schedule A from four groups to two; these are discussed below. Aliens who qualify for the occupations listed in Schedule A are considered "precertified" on the basis of their qualifications. Prospective employers need not demonstrate, as they must in the case of non–Schedule A applications, that they have been unable to obtain qualified U.S. workers for a particular job. These are known as "blanket" certifications. [20 CFR 656.10]

12.5.3.1.1 Group I—Nurses and physical therapists. Only two occupations, physical therapy and nursing, remain in Group I, which formerly was much larger. [20 CFR 656.10(a)] To qualify in this group, a physical therapist needs to hold a bachelor's degree and possess a license or statement signed by an authorized state physical therapy licensing official in the state of intended employment stating that he or she is qualified to take the licensing examination. An alien nurse must have passed the Commission on Graduates of Foreign Nursing Schools Examination or hold a full and unrestricted license to practice professional nursing in the state of intended employment. To file a petition based on Group I see Section 12.5.3.2.

12.5.3.1.2 Group II—Aliens of exceptional ability in the sciences and arts. Group II includes aliens (except for aliens in the performing arts) of exceptional ability in the sciences or arts including college and university teachers of exceptional ability who have been practicing their science or art during the year prior to application and who intend to practice the same science or art in the United States. For purposes of this group, the term "science or art" means any field of knowledge and/or skill with respect to which colleges and universities commonly offer specialized courses leading to a degree in the knowledge and/or skill.

It is not imperative that an alien possess a degree in order to qualify under Group II. Most university-related Schedule A applications come under the terms of Group II. [20 CFR 656.10(b)]

12.5.3.1.3 Groups on Schedule A prior to 1 October 1991. Prior to the change in the law, two additional groups were listed in Schedule A: Group III aliens (aliens seeking to enter the United States in certain religious occupations or to work in certain religious activities) and Group IV aliens (aliens currently working in managerial or executive positions with international corporations or organizations that wish to use the aliens' services in the United States). Aliens falling into these groups must now file visa petitions under the newly created employment-based preference categories.

12.5.3.2 Procedure for Schedule A applications

Schedule A, Group I, applications are filed with the INS regional service center in the United States having jurisdiction over the proposed place of employment. The application is made on Form ETA 750, parts A and B. The employer must simultaneously file a Form I-140, Employment-based Preference Petition, and supply documentary evidence of the alien's qualifications. [20 CFR 656.22(c)] Further, for all applications filed after 1 October 1991, the employer must include evidence that notice of the filing of an application for permanent labor certification for the relevant occupation has been provided to a bargaining representative, if applicable, or, if no representative exists, that such notice was posted for 10 consecutive business days. For Group I occupations, the notice must include a description of the job and rate of pay, as well as provide a statement notifying the public where any information regarding the application or occupation should be provided. [20 CFR 656.20(g)(8)] See Section 12.5.4.1 for more details regarding these new notice requirements for Group I occupations.

In addition to the Form ETA 750, Form I-140 and adherence to new notice requirements (see Section 12.5.4.1), federal regulations require that applications filed under Group II include documentary evidence as to the current widespread acclaim and international recognition accorded the beneficiary by recognized experts in his field, documentation showing that his intended work in the United States will require exceptional ability and documentation from at least two of the following:

1. documentation of the alien's receipt of internationally recognized prizes or awards for excellence in the field for which certification is sought;
2. documentation of the alien's membership in international associations in the field for which certification is sought, which require outstanding achievements of their members, as judged by recognized international experts in their fields;
3. published material in professional publications about the alien, relating to the alien's work in the field for which certification is sought;
4. evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of the specialization to that for which certification is sought;
5. evidence of the alien's original scientific or scholarly research contributions of major significance in the field for which certification is sought;
6. evidence of the alien's authorship of published scientific or scholarly articles in the field for which certification is sought, in international professional journals or professional journals with an international circulation; and/or
7. evidence of the display of the alien's work, in the field for which certification is sought, at artistic exhibitions in more than one country. [20 CFR 656.22(d)]

INS makes decisions on Schedule A applications simultaneously with decisions on employment-based preference petitions, provided they are filed at the same time.

12.5.4 Non-Schedule A occupations

In order to secure a labor certification for a non-Schedule A occupation, DOL's Employment and Training Administration must determine not only that the applicant has the requisite qualifications for the occupation but also that there are no qualified U.S. workers available to fill the position and that the position offers prevailing wages and working conditions not lower than those under which similarly qualified U.S. citizens or permanent residents work. Applications for labor certification for non-Schedule A positions (called "individual" labor certifications) are filed on Form ETA 750 with the state employment service office having jurisdiction over the alien's prospective place of employment. The Form ETA 750 and accompanying documents must demonstrate that the prospective employer has made a conscientious effort to recruit a qualified U.S. citizen or permanent resident to fill the position. The application must describe the job duties and state the minimum education, training, and experience necessary to perform the duties of the position in a satisfactory and reasonable manner. The job requirements must be clearly job related and the alien must possess these qualifications. Certification is likely to be denied if there is any suggestion that the employer has tailored the list of qualifications in such a way as to make anyone other than a particular alien appear unqualified for the position.

The position that is offered must be a permanent one if the labor certification is to be used as the basis for an application for an immigrant visa. Although the term "permanent" is not expressly defined in the regulations, it is usually interpreted to refer to a job offer that does not have a specified termination date, but certainly longer than 1 or 2 years.

12.5.4.1 Revisions in the labor-certification process brought about by the Act of 1990

The Act of 1990 made several changes to the labor-certification process. Notice requirements, for example, have become more stringent for all labor-certification applications, and third-party complaints are now easier to file. Furthermore, a 3-year pilot program has been set up to designate 10 surplus and shortage occupations.

With regard to the new notice requirements for all labor-certification applications filed on or after 1 October 1991 (including applications for college and university teachers under special handling and all Schedule A occupations under blanket labor certification), the petitioning employer must now document that notice of the filing of the application for labor certification was provided to the bargaining representative of the employer's employees (for the occupational classification for which certification is sought) in each of the employer's facilities located in the area where the alien will work. If there is no such representative, the employer must post a notice in a conspicuous place on the employer's premises for at least 10 consecutive days. The notice must state that an application for permanent-alien labor certification for the relevant job opportunity has been filed and that any person may provide documentary evidence bearing on the application to the local Employment Service Office (a division of the State Employment Security Agency, DOL) and/or the regional DOL certifying officer. For all applications except Schedule A applications, the notice must also include all information required for advertisement of the job, such as the job description, the minimum requirements for the job and the salary offered and hours to be worked per week. It must also invite any individuals interested in the job opportunity to report to the employer. [20 CFR 656.20(g)] Inasmuch as Schedule A applications do not require advertising, the information regarding the position on the notice for such applications must include only the description of the job and rate of pay.

If an application is filed under preapplication recruitment, the notice does not have to be posted during recruitment (see Sections 12.5.4.2 and 12.5.4.2.1). If an application is filed under postapplication recruitment, the notice shall be provided in conjunction with the required recruitment at the direction of DOL (see Section 12.5.4.2.2). If an application is filed on behalf of a college or university teacher, the notice or posting must include the information required for advertisements by 20 CFR 656 21a(1)(iii)(B). It must also invite applications to be directed to the employer, provide notice that an application for alien labor certification is being filed for such job opportunity, and state that any person may provide evidence bearing on such application, as articulated above (also see Section 12.5.4.3).

With regard to third-party complaints, 20 CFR 656.20 states that any person may submit information about labor-certification applications including information about wages, the availability of U.S. workers, or the employer's failure to meet the terms and conditions within the application for labor certification with respect to the employment of the alien or coworkers.

Finally, occupations to be listed in the labor market information pilot program have not been released. Under the pilot program, the Labor Department will designate shortage occupations that will be deemed to be certified under the Act. Thus, a labor-certification application to DOL will not be required for such occupations: ETA 750 will be filed simultaneously with Form I-140 and proof that the occupation is a designated shortage occupation. Conversely, DOL can also designate "surplus" occupations. It will be more difficult to obtain labor certification for these latter occupations.

12.5.4.2 Positions other than college and university teachers (basic labor-certification process)

In the case of non–Schedule A positions that do not involve college or university teaching, labor certifications can be issued only if there are no minimally qualified U.S. workers available and willing to take the position. If a minimally qualified U.S. worker applies for the position and is willing to accept it, a labor certification will not be granted, even if the alien applicant is better qualified. (Requirements for the basic labor-certification process are detailed in 20 CFR 656.21.)

Forms ETA 750, parts A and B, must evidence the following:

1. The qualifications of the alien
2. A description of the job offer
3. The working hours and salary offered
4. No unduly restrictive job requirements
5. A willingness to place the job offer in the state employment service system and proceed with advertising, to provide notice of the filing of a labor-certification application to bargaining representatives (or to post the opening internally) if the state labor department so directs, and to offer evidence that preapplication recruitment was done.

12.5.4.2.1 Preapplication recruitment. Not all regions allow for preapplication recruitment. However, in those regions that do, documentation must be submitted along with ETA 750 that within the prior 6 months good-faith efforts were made to recruit U.S. workers through advertising, notification to the state employment service, employment agencies, or other sources normal to recruitment in that occupation and that such efforts have been unsuccessful. This documentation should include:

1. Identification of the recruitment sources used
2. Number of U.S. workers responding
3. Number of U.S. workers interviewed
4. Wages and working conditions offered
5. A copy of an advertisement that ran in a newspaper of general circulation for 3 consecutive business days or in one issue of an appropriate professional publication
6. A copy of a notice of job availability stating that an application for labor certification was being filed for the job opportunity and indicating where any information bearing on the application could be submitted. Also required is a statement confirming that such notice was either prominently posted at the place of business for 10 consecutive days or was provided to a bargaining representative, if applicable (see Section 12.5.4.1 for more details on new notice requirements).
7. The lawful job-related reasons why U.S. applicants were considered unqualified and/or evidence that a qualified applicant was offered the position but declined it.

If any résumés were received during the recruitment effort, copies must be provided to the labor department.

Many universities and colleges refuse to provide this information on grounds of protecting privacy. If the reasons are made clear, regional certifying officers will sometimes permit institutions to omit the names and resumes and to substitute coded identifications, such as "Applicant A, Applicant B," and so on.

8. A request for a waiver of further recruitment. The regional certifying officer may reduce any or all postapplication recruitment efforts if satisfied that the employer has conducted adequate preapplication recruitment with no success. A letter directed to the certifying officer requesting a waiver of further recruitment may be attached to the Form ETA 750 and should describe the unsuccessful recruitment efforts of the last 6 months and explain why the employer believes that further recruitment efforts would prove unsuccessful.

If the request for a waiver of further recruitment is denied or if there has been no preapplication recruitment, the employer must enter the job into the state employment service system and comply with the advertising and posting requirements described above at the direction of DOL.

12.5.4.2.2 Postapplication recruitment. Once the local office of the state labor department reviews an application for labor certification, it will request that the employer conduct recruitment if a waiver of further recruitment has not been requested. Generally, the information required in preapplication recruitment is identical to that required in postapplication recruitment (see Section 12.5.4.2.1).

In the postapplication recruitment process, the state employment service will normally wish to screen and edit the language used in the job advertisement. In some instances, it may be judicious to gain approval of the job-advertisement language and the wage offered in advance of preapplication recruitment as well. In both pre- and postapplication efforts, the regulations require the inclusion in the job advertisement of a salary or salary range on the grounds that U.S. workers would have a stronger inducement to apply for a position if they knew the wage being offered. Additionally, in postapplication recruitment, applicants are instructed to send their résumé to the local job service, which in turn forwards the résumés to the employer.

To save time and to avoid having to provide the names and résumés of all U.S. applicants for the position, institutions wishing to employ alien researchers and other staff may wish to use the preapplication recruitment procedure whenever possible if it is determined that, in the institution's DOL region, the certifying officer is willing to grant requests for waivers of postapplication recruitment.

On 16 December 1987, DOL disseminated "Permanent Alien Labor Certification Advertising Guidelines" that specify publications or types of publications considered appropriate for advertising various kinds of positions. These guidelines are reproduced in *Interpreter Releases*, 24 March 1988, pp. 255-60.

12.5.4.3 College and university teachers ("special handling")

Standards and procedures for labor-certification applications involving college or university teachers are different from those involving other kinds of positions. These procedures are referred to as "special handling;" cases so identified frequently receive expedited treatment. In the case of a college or university teacher, a labor certification can be issued if the alien is as least as qualified for the position as any U.S. applicant. [Act 212(a)(5)] This provision applies only to college and university teachers who engage in at least some classroom instruction, according to the *Technical Assistance Guide*. The amount of teaching is not specified. Special handling does not apply to researchers or other college and university staff members. The complete regulations concerning labor certification for college and university teachers are found in 20 CFR 656.21a; additional information is found in DOL's *Technical Assistance Guide 656*.

Application for a labor certification for a prospective college or university teacher is made by filing Form ETA 750, parts A and B, in duplicate (some offices request it in triplicate or quadruplicate) with the state employment service office serving the area in which the college or university is located. Along with the completed Form ETA 750, the employer must document that notice of the filing of the application was provided to the bargaining representative of its employees in the occupational classification for which certification is being sought, or if there is no such representative, that the notice was posted in a conspicuous place for 10 consecutive days. The notice must include the information that was included in the advertisement for the job opportunity as set out in the regulations for special handling, but need not be posted at the time recruitment was conducted (see Section 12.5.4.1 for details on required elements in the notice). [20 CFR 656.20(g)(6)] The employer must also submit "documentation to show clearly that the employer selected the alien for the job opportunity pursuant to a competitive recruitment and selection process, through which the alien was found to be more qualified than any of the U.S. workers who applied for the job." [20 CFR 656.21a(a)(l)(iii)]

Evidence concerning the competitive recruitment process is to include the following:

> (A) A statement, signed by an official who has actual hiring authority, ... outlining in detail the complete recruitment procedure undertaken, [and including]
>
> (1) The total number of applicants for the job opportunity;
>
> (2) The specific, lawful, job-related reasons why the alien is more qualified than each U.S. worker who applied for the job; and

3) A final report of the faculty, student, and/or administrative body making the recommendation or selection of the alien...;

(B) A copy of at least one advertisement for the job opportunity placed in a national professional journal, giving the name and the date(s) of publication; and which states the job title, duties, and requirements;

(C) Evidence of all other recruitment resources utilized; and

(D) A written statement attesting to the degree of the alien's educational or professional qualifications and academic achievements. [20 CFR 656.21a(a)(l)(iii)]

Labor-certification applications for college and university teachers must be filed within 18 months of the selection. Upon receipt of a labor-certification application for a position for a college or university teacher, the local state employment service office will date-stamp the application and make sure that it is complete. The local office will calculate the prevailing wage for the job to assure that the salary being offered the alien is not below the prevailing wage. Finally, the local office will send a file containing the application and any additional information pertaining to it to the state employment service, which in turn will forward it to the DOL regional certifying officer. Note that in the case of labor certifications for college and university teachers no additional recruiting is required following submission of the application.

12.5.4.4 Processing of non-Schedule A applications

The employer must file Forms ETA 750, parts A and B, and all supporting documentation with the local state employment service office, which carries out an initial screening of the application for completeness and for compliance with all regulatory requirements (see Sections 12.5.4.2 and 12.5.4.3). The local office also calculates the prevailing wage for the job and puts its findings into writing. If the local office finds that the wage rate offered is below the prevailing wage, it advises the employer in writing to increase the amount offered or provide countervailing evidence, in the form of other, more accurate wage surveys, that the wage offer is, indeed, accurate. Failure to comply with this advice may result in denial of the labor certification. Employers will sometimes find it useful to include in their applications comparative wage data about highly specialized research positions to guide the local office in establishing the prevailing wage. If the wage and all requirements for the position are acceptable to the labor department and the application lacks any recruitment documentation, the labor department will request that recruitment commence. After recruitment is completed, the application will then be forwarded, with a recommendation, to the regional certifying officer, who will make a final determination.

The entire labor-certification process may be lengthy. It ranges from less than a month in some parts of the country to more than 1 year in others. In the latter situations, institutions should explain to all state and federal officials involved what hardships are created by such lengthy processing periods and explore every possibility for reducing the time required.

It is worth noting that differences other than the processing time exist among the 10 regional alien certification offices. Because wages and the availability of qualified U.S. workers vary among the different regions, the labor-certification process for a given alien in a given profession could have very different results in Texas, for example, than in California. Furthermore, some regional offices consistently approve (or deny) a higher percentage of applications than do others.

12.5.4.5 Procedures following decision on non-Schedule A applications

Decisions on non-Schedule A applications are made by the regional certifying officer at the regional office of the DOL Employment and Training Administration having jurisdiction over the state employment service office where the application was filed. The decision is made on the basis of the application form, the supporting documents, information added by the state employment service, and information about the labor market. [20 CFR 656.25]

If the certifying officer believes the application is not approvable, the employer is sent a dated Notice of Findings, which gives the specific reasons for which the regional certifying officer has tentatively determined that the application is deniable; the date by which the employer must rebut the Notice of Findings (35 calendar days from the date of issuance of the Notice of Findings); and an explanation of the rebuttal procedures that the employer should follow.

A written rebuttal to the Notice of Findings can be submitted by the employer or by the alien, but the alien can submit a rebuttal only if the employer also does so. The rebuttal must be sent by certified mail within 35 calendar days of issuance of the Notice of Findings. The rebuttal may contain evidence or arguments intended to refute statements made in the Notice of Findings, or to show that defects described in the Notice of Findings have been remedied. If no rebuttal is submitted, the Notice of Findings becomes a denial that is not subject to administrative review. If a rebuttal is submitted, the certifying officer will consider it and then either approve or deny the labor certification.

If the application is approved, either originally or following a rebuttal to a Notice of Findings, the regional certifying officer applies an official stamp to the application and sends the application, supporting documentation, and the completed final determination form either to the employer or to the employer's agent, as appropriate. The final determination form carries instructions concerning the next step to be taken in seeking an immigrant visa for the alien (filing the I-140 petition).

If the application is denied, the certifying officer will send the employer a final determination form giving the date of the denial, the reasons for the denial, and information about appeal procedures open to the employer. After 6 months, the employer may apply anew for a labor certification for the same position. (There is no waiting period if the certification was denied because the wage or salary offered was below the prevailing wage.)

An approved labor certification does not confer employment authorization. It is, in effect, merely a supporting document for an employment-based preference petition.

12.5.5 Appeals

When a non–Schedule A application has been denied, either the employer or the alien (only if supported by the employer) can request an "administrative-judicial review." The request must be filed in writing within 35 days of the final denial and issuance of the final determination form, and it must meet the guidelines spelled out in 20 CFR 656.26. The review is conducted by an administrative law judge (or panel of judges) working under the Board of Alien Labor Certification Appeals, created in April 1987. [20 CFR 656.26, 656.27, 656.27a, and 656.05] This board makes precedent rulings that are expected to bring about more consistency among the regional certifying officers.

12.5.6 Further information regarding labor certification

The above description is a simplified summary of very complicated and detailed procedures and standards set forth in DOL regulations, as published in 20 CFR 656. The text of 20 CFR 656, with extensive and helpful notes, sample forms, and full instructions, appear in DOL *Technical Assistance Guide 656*, which is available from state employment service offices, DOL regional offices, or the Government Printing Office. The supplementary assistance the guide offers is especially helpful, as Form ETA 750 and its accompanying instructions provide inadequate guidance on the labor-certification procedure.

12.6 APPLYING FOR AN IMMIGRANT VISA ABROAD

Once the classification for a prospective immigrant has been determined—whether through a family or employment relationship—and the appropriate immigrant-visa petition has been filed and approved and the individual's priority date reached, he or she is eligible to apply for an immigrant visa (see Section 12.4.2 on numerical limitations and Section 12.8.2 on availability of visa numbers). Individuals who have maintained and are currently in legal nonimmigrant status have the option of applying for the immigrant visa in the United States (adjustment of status) or of returning to their native country and applying at the U.S. consulate closest to their home abroad (consular processing). However, individuals (other than immediate relatives) who have violated their nonimmigrant status by overstaying or working without INS authorization are statutorily barred from adjustment of status and must resort to consular processing and apply for the immigrant visa abroad.

Once INS approves the visa petition, it is sent to the Department of State's Transitional Visa Processing Center. Upon receipt of the approved visa petition from INS, the processing center supplies the prospective immigrant with the necessary application form and instructions, often known as "Packet 3." In addition to an application form, the packet includes a biographic data sheet and instructions regarding necessary documents and procedures to prepare for a consular interview. The processing center then forwards the approved petition to the American consulate designated on the approved petition.

The applicant must inform the consular office that all of the necessary documents are available. When the necessary procedures have been completed at the consular office, the final interview is scheduled and notice is sent to the applicant, along with the forms for the principal beneficiary and all dependents, if applicable, to complete for the interview. At this point the applicant and all dependents must make arrangements to take medical examinations, in accordance with the instructions of the consulate, and appear at the interview. If they must leave the United States to appear at the interview, they will rarely be required to be away for more than 1 week.

The alien's documents are reviewed at the time of the interview, and the visa is either granted or denied. If the visa is approved, the alien (and family, if applicable) must enter the United States within 4 months, at which time he or she is issued an immigrant visa in the form of a stamp in his passport. The laminated alien registration card or "green card" (which is now pink) will be sent to the individual's home address within 6 months. If the card does not arrive, an inquiry to the immigration card facility in Arlington, Texas, should be made on Form G-731. This form is available at INS.

12.7 APPLYING FOR ADJUSTMENT OF STATUS IN THE UNITED STATES

The process of obtaining immigrant status by adjusting from nonimmigrant to immigrant status while in the United States is basically the same as that for obtaining an immigrant visa abroad. It involves establishing eligibility for an immigrant visa by one of various means, filing a preference visa petition at an INS service center, and obtaining the preference approval. It also requires that an immigrant visa be immediately available to the prospective applicant, that is, the applicant's "turn" in the preference system's "waiting line" must have arrived; his or her priority date must be current. However, unlike applying for an immigrant visa abroad, in order to be eligible to adjust to immigrant status in the United States, the individual must have maintained nonimmigrant status at all times and never have worked without INS authorization. Individuals who have in any way violated their nonimmigrant status must apply for an immigrant visa at a U.S. consulate abroad. Individuals who are being petitioned by a U.S. citizen spouse, son, or daughter as an immediate relative may adjust status so long as they entered the United States with a valid visa (see Sections 12.4.2.1.1 and 12.7.3).

Once the visa petition is approved and the alien's priority date is current, he or she may make formal application to adjust his status from nonimmigrant to immigrant at the local INS district office having jurisdiction over his or her place of residence.

12.7.1 Nonimmigrants ineligible to adjust status

Although otherwise qualified to apply for an immigrant visa, many aliens in the United States are ineligible to adjust to immigrant status in the United States. (Ineligibility for adjustment of status is quite distinct from ineligibility for a visa and admission, as described in Section 12.4.4.1.) Such aliens include those:

1. admitted as transit aliens (C visa or TWOV on I-94) and crewmen (D visa);
2. those who were not inspected at the U.S. border;
3. those who have failed to maintain their nonimmigrant status, except immediate relatives of a U.S. citizen (see Section 12.7.3); and
4. those who worked in the United States without authorization, except for immediate relatives of a U.S. citizen (see Section 12.7.3).

12.7.2 Application for adjustment of status

An alien who is eligible to seek adjustment to immigrant status on the basis of an approved immigrant-visa petition must file Form I-485 and supporting documents to the local INS district office in the jurisdiction where the alien resides. Similarly, if their visa status is based on a derivative relationship with the principal alien, a spouse and minor children who are also in legal nonimmigrant status must file Form I-485 at the same time. Filing may be done in person or by mail. Some offices require seeing an original passport. It is advisable to file the application in person. Upon filing an application for permanent residence status, an alien is entitled to apply for employment authorization on Form I-765 and will be issued an employment authorization card, valid for 6 months to 1 year (see Section 12.7.4). Each district office has its own procedures for filing a request for work authorization and applications for permanent residence.

Documents usually required to adjust status include an immigrant visa approval notice on Form I-797, Form I-485 (Application for Permanent Residence); Form I-486 (Medical Examination and Immigration Interview); Form G-325A (Biographic Data); evidence of financial support, including a confirmation of employment from the same employer that filed an employment-based preference petition on behalf of the applicant; fingerprint cards; birth certificate; marriage or divorce certificate(s) (if relevant to the application); proof that the applicant has been maintaining lawful nonimmigrant status; photographs that meet certain specifications; and the required fee. The instructions on the application for permanent residence specify what supporting documents are needed for each particular application. Some districts require a medical examination before an application for permanent residence can be filed. Others allow the applicant to bring the results of the medical examination to the interview. In either case, INS will provide a list of physicians who are authorized by INS to conduct medical examinations; the exam must be completed by one of those specified.

Some districts, albeit very few, provide one-step processing. That is, the alien may bring in all forms and documentation, pay the fee, be interviewed, and then wait for approximately 90 days to receive notification that permanent-resident status has been granted. In other districts, the application and supporting documentation are filed with INS and the alien is scheduled for a later interview before an INS officer. The interview takes place approximately 90 to 240 days after the initial application. Applicants receive written notification of the date and time of the interview and are told what documents they must bring to the interview. In other districts, the application and supporting documentation are filed with INS and the alien is notified of the date and time of the interview 2 or 3 weeks beforehand. In the latter two scenarios, permanent residence is granted at the interview if the INS officer is satisfied with the application. At this time the applicant is issued an immigrant visa in the form of a stamp in his or her passport. The laminated alien registration card ("green card") will be sent to the individual's home address within 6 months. If the card does not arrive, an inquiry to the immigration card facility in Arlington, Texas, should be made on Form G-731. This form is available at INS.

12.7.3 Adjustment of status of an immediate relative

If an alien is in the United States, an I-130 visa petition need not have been approved in order to file for adjustment of status to permanent resident if that alien will be classified as an immediate relative (parent, spouse, or minor child of a U.S. citizen). In this case, Form I-130 may be filed concurrently with Form I-485 and other required documentation as set out in Section 12.7.2 at the local INS office in the area where the beneficiary resides. Additionally, aliens classified as immediate relatives who overstayed their nonimmigrant visa, entered the United States on the visa waiver pilot program, or worked without authorization are still entitled to apply for adjustment of status, unlike all other prospective immigrants. However, if the alien entered without a nonimmigrant visa, he is not eligible to adjust status. In such cases, Form I-130 must be filed separately with INS; once the petition is approved, the alien must make application for an immigrant visa abroad (see Section 12.6).

If the applicant is the spouse of a U.S. citizen (or permanent resident) and the marriage is less than 2 years old at the time the applicant is granted permanent residence, the applicant will receive "conditional" permanent residence, a condition that must be removed after 2 years as a permanent resident (see Section 12.10).

12.7.4. Work authorization pending application

All applicants who apply for adjustment of status are eligible to apply for employment authorization. The application is submitted on Form I-765. An applicant for adjustment of status who possesses a nonimmigrant visa that entitles work authorization (such as an H-1B) may still need to apply for permission to work if that nonimmigrant status will expire during the pendency of the adjustment-of-status application. Similarly, an applicant for adjustment of status who currently holds an H-1B visa for one employer and wants to work for another, even part time, during the pendency of an adjustment-of-status application must also obtain work authorization. Even though the employment authorization card is valid for 6 months to 1 year, employment authorization is generally terminated if the application for adjustment of status is denied.

12.7.5 Departure from the United States during processing of application for adjustment of status

Unless special provisions for return to the United States are made, a person who has applied for adjustment of status under Section 245 of the Act is considered to have abandoned the application if he or she leaves the United States while the application is pending. To avoid abandoning the application, the alien should, before leaving the United States, apply to the district INS office for "advance parole," which is granted on Form I-512. [8 CFR 212.5(c)] The INS will grant advance parole only if the request (made on Form I-131 and accompanied by two photographs) is presented with convincing evidence that the alien's temporary departure from the United States is necessitated by a business matter or family emergency. Aliens are eligible for advance parole in these circumstances only after they have filed applications for adjustment of status (Form I-485).

12.8 TIME REQUIRED TO OBTAIN IMMIGRANT VISA OR STATUS

Two factors influence the length of time required to obtain an immigrant visa while abroad or to adjust to immigrant status in the United States. One factor is the processing time for petitions and applications; the other is the availability of visa numbers.

12.8.1 Processing time

The amount of time required to adjudicate visa petitions and immigrant-visa applications depends on the staffing and workload at the particular INS or consular offices (the time required for action on labor certifications is discussed in Section 12.5.4.3). In some locations this processing time can be as little as 2 months, although processing times of 6 months to 1 year are becoming increasingly prevalent. Advisers can ask INS district offices for an estimate of the time required to process various petitions and applications.

12.8.2 Availability of visa numbers

If an alien's priority date has been reached, an immigrant visa is immediately available (see Section 12.4.5.3). In recent years, it had become rare for visa numbers to be immediately available for most preference classifications. Although the Act of 1990 substantially increased the number of visas for employment-based immigration and many visa numbers may now be immediately available, backlogs in most family-based preferences will still vary in length from several months to several years. Information about priority dates and backlogs is available in a publication called the *Visa Office Bulletin*. The *Bulletin* is a monthly publication of the Visa Office of the Department of State and provides information about the availability of immigrant visas for each preference classification. One may receive the *Bulletin* at no charge by sending a request to *Visa Bulletin*, Visa Office, U.S. Department of State, Washington, D.C. 20522-0113.

12.8.3 Problems caused by delays

Even in the best of cases, several months will pass from the time an employer files an application for labor certification to the time the beneficiary files for adjustment of status to that of a permanent resident or receives an immigrant visa.

For example, assuming that all the necessary documents can be assembled for an application for labor certification in a month, the labor certification itself might be approved in 6 months, and the I-140 petition will take approximately 2 months to be adjudicated by INS. Application for permanent residence takes at least 4 more months. Thus, it is impossible to complete the entire process in less than 1 year. As each region within the United States has different processing times for each step in the process, careful planning and a knowledge of the delays involved are necessary to avoid situations in which aliens cannot legally assume the positions for which colleges and universities wish to hire them. In light of the fact that "dual intent" has been statutorily recognized (see Section 10.3.2.3), it is possible for the employer to apply for an H-1B visa on behalf of the alien and offer temporary rather than permanent

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employment at any time during the labor-certification process.

12.9 IMMIGRANT DOCUMENTATION

When an alien first enters the United States as an immigrant or is granted immigrant status through adjustment of status, he or she is first issued a passport stamp indicating temporary evidence of permanent residence. The stamp is generally valid for 6 months, during which time the Alien Registration Receipt Card, Form I-551 (formerly Form I-151) is processed and sent to the alien. The stamp is evidence of permanent residence and employment authorization and can be used for travel abroad. The alien registration card is a laminated rectangular card, 2-1/8" by 3-1/2" in size. It is commonly known as the "green card," although the current edition is pink and blue. Other colors have been used in the past, the most prevalent being white with salmon stripes. The current pink edition also shows an expiration date of 10 years from the date of issuance. No additional qualifications are required of the alien upon renewal, although a new picture, fingerprint, and signature will be necessary. By placing an expiration date on the card, INS hopes to cut down on fraudulent uses. Immigrant aliens are required by law to carry the "green card" at all times. [Act 264(e)]

12.10 MARRIAGE FRAUD AMENDMENTS

Section 216 of the Act places into "conditional permanent-resident status" for 2 years all aliens who qualify for immigrant status through a marriage to a U.S. citizen or permanent resident entered into less than 2 years before permanent residence was obtained. The benefits afforded this group of aliens with respect to reentry to the United States, work authorization, etc., are identical to those given to other permanent residents. The 2 years spent in conditional status count toward the residence requirements for naturalization.

For conditional status to be removed (and permanent residence made unconditional), the couple must, during the 90-day period preceding the second anniversary of acquisition of conditional status, jointly file Form I-751 to the regional service center having jurisdiction over their place of residence and, if INS deems necessary, appear at a scheduled interview to establish that the marriage was not judicially annulled or terminated other than by the death of a spouse, was not entered into for the sole purpose of procuring an alien's entry as an immigrant, and did not entail any fee or other consideration for filing the immigration petition. Conditional status may also be removed, at the discretion of INS, if the alien's deportation would result in "extreme hardship," if the "qualifying marriage" was entered into in good faith but has been terminated for "good cause," or if, during the marriage, the alien was battered or subjected to extreme cruelty by the petitioning spouse and the alien was not at fault for failing to meet the statutory requirements. Under such circumstances, Form I-752 is filed by the alien with supporting documentation as articulated on the Form. Form I-752 can be filed at any time. If a couple fails to file the petition within the required 90-day period preceding the second anniversary or fails, unless good cause is shown, to appear for the interview, lawful immigration status will be terminated and the alien spouse (and children, if they entered the United States based upon the marriage) will become deportable.

Any individual convicted of the felony of knowingly marrying for the purpose of "evading any provision of the immigration laws" can be imprisoned for up to 5 years and fined up to $250,000, or both.

12.11 ABSENCE FROM THE UNITED STATES

12.11.1 Absence of under 1 year

If the immigrant alien travels outside the United States and returns within 1 year, and if the alien has not abandoned his or her U.S. residence, the alien may be readmitted to the United States by presenting the Alien Registration Receipt Card to the immigration inspector at the port of entry, provided he or she is otherwise eligible for admission. [8 CFR 211.1(b)(1)]

12.11.2 Absence of 1 year to 2 years

If an immigrant alien plans to be outside the United States for more than 1 year but less than 2 years, the alien should apply to INS on Form I-131 for a reentry permit. Application must be made while the alien is physically present in the United States, preferably at least 30 days before the proposed date of departure from the United States. [8 CFR 223] A reentry permit is valid for a period of 2 years from the date of issuance and cannot be renewed, although there is no prohibition from applying for another reentry permit at that time. [8 CFR 223.2] Some foreign countries may accept a reentry permit in lieu of a passport if the immigrant is unable or unwilling to obtain a valid passport from the country of his or her citizenship. Immigrants planning to be away from the United States for more than 2 years will have to make special efforts to document their intent to reside in the United States permanently to avoid loss of permanent residence.

12.11.3 Travel prohibition to certain countries

Immigrants have the same privileges as U.S. citizens with regard to travel abroad. When there is a Department of State ban on travel to a certain country (e.g., Lebanon in 1988), the ban extends to immigrants as well as U.S. citizens.

12.12 NATURALIZATION

An immigrant alien is not required to become a U.S. citizen at any time, and an immigrant may retain U.S. permanent-resident status and foreign citizenship for an indefinite length of time. However, if the alien elects to apply for naturalization, he or she is eligible to do so only after having lived in the United States as a permanent resident for a period of at least 5 years (or a period of 3 years if the immigrant has been married to a U.S. citizen for 3 years). Forms for applying for naturalization are available from INS.

In many instances, an alien will lose citizenship in a foreign country when he or she becomes naturalized as a U.S. citizen, but this is not always the case. Aliens who wish to retain dual citizenship should consult with officials of their country of initial citizenship.

12.13 UNFAIR IMMIGRATION EMPLOYMENT PRACTICES

The Act prohibits employers from discriminating on the basis of a person's national origin or citizenship status. [Act 274B(a)] An example of discrimination based on citizenship status is an employer's refusal to hire any applicant who fails to present a U.S. passport.

These antidiscrimination provisions protect U.S. citizens and nationals and permanent residents, refugees, and those granted political asylum. It does not protect those permanent residents who fail to apply for naturalization within 6 months of the date of their eligibility. [Act 274B(a)(3)] Permanent residents who are not protected under these provisions may be protected under equal employment opportunity laws against discrimination based on ethnic origin.

Permanent residents are no longer required to file a declaration of intending citizen in order to be protected under the above-mentioned antidiscrimination provisions.

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13.1 INTRODUCTION

This section deals with a variety of topics that may be of interest to foreign student advisers. It considers certain technical aspects of immigration law and procedure that, although not within the usual routine of international educators, should be reviewed, since the foreign student adviser often serves as a campus and community resource on immigration matters.

Among the topics covered in this section are definitions of terms, procedures that may be used when seeking review of adverse INS or Department of State decisions, deportation and exclusion, refugee and asylum status, extended voluntary departure, stateside processing, legalization, and employer sanctions.

13.2 DEFINITIONS

13.2.1 Inspection

The process wherein INS personnel at ports of entry examine aliens' documents and question them to determine whether, under pertinent laws and regulations, they qualify to be admitted.

13.2.2 Admission

Legal entry into the United States, following inspection by an immigration officer at a port of entry.

13.2.3 Deferred inspection

A procedure wherein an alien's inspection and admission are postponed and referred to an INS district office. Deferred inspection is used when the inspector has serious questions about the alien's admissibility, for example, when the alien has documents that seem incompatible with each other or with the alien's spoken intentions. Under deferred inspection, the alien is given a Form I-546 and ordered to report to a designated INS office by a specified time, usually within 15 days. This procedure is different from the issuance of a Form I-515, Notice to Student or Exchange Visitor. The Form I-515 is issued when the alien is missing the Form I-20 or the Form IAP-66 and can convince the INS inspector that there is a good reason (e.g., lost forms, inspector error, or a postal strike) for not having the form. Such aliens are admitted to the United States and given 30 days to carry or mail the proper form to the INS district office having jurisdiction over their place of residence.

13.2.4 Exclusion

The act of denying admission to the United States to an alien for reasons set forth in Section 212(a) of the Act. The many grounds for exclusion given in the Act include past convictions for criminal acts, misrepresentations given in applying for a visa, certain types of illness, and membership in a communist party. Waivers of excludability can be and frequently are granted. [8 CFR 212] Communist party members entering as nonimmigrants are no longer inadmissible. Waivers are also available for other grounds that might be pertinent to students and scholars (e.g., some criminal convictions and health conditions).

13.2.5 Parole

Allowing into the United States an alien who might not be eligible for admission in any other way. At its discretion, INS may "parole in" an alien who, for example, is not admissible in any regular nonimmigrant category. An alien who is paroled into the United States and whose parole status expires or is terminated is subject to exclusion (as if a legal entry had never been made) as opposed to deportation procedures.

INS can grant "advance parole" to an alien who has applied for adjustment of status, whose application is still in process, and who has urgent reason for going abroad (see Section 12.7.4).

13.2.6 Deportation

The act of effecting an alien's involuntary departure from the United States for reasons set forth in Section 241(a) of the Act. The grounds for deportation are not only similar in many respects to the grounds for exclusion (e.g., criminal acts, misrepresentations, membership in a communist party, subversive activities), but in fact incorporate the grounds for exclusion as a reason for deportation if an individual was excludable at the time of entry. [Act 241(a)(1)] Aliens who overstay, engage in unauthorized employment, fail to maintain a valid passport, or fail to report changes of address within 10 days are subject to deportation. [Act 241(a)(1 and 3)] See Section 13.4 for more complete information concerning the grounds for and process of deportation.

13.2.7 Private bill

Congressional legislation that would exempt an individual from one or more of the requirements of the immigration and nationality laws or would confer a benefit for which the alien would not otherwise be eligible under those laws. Most of these bills are introduced to confer permanent residence on aliens who came to the United States as nonimmigrants but who are no longer in lawful nonimmigrant status. Introduction of a private bill in the House of Representatives does not, in practice, stay any deportation action unless the Immigration Subcommittee requests a report on the case from INS; introduction of a private bill in the Senate does stay such action. A private bill relieving an exchange visitor (J-1 or J-2) of the 2-year foreign-residence requirement under Act 212(e) has never been enacted. Under congressional committee rules, a private bill is to be considered in either house only where all relief has been sought and denied by relevant government agencies and where exigent humanitarian circumstances or the national interest is involved. This form of relief is indeed extraordinary.

13.3 APPEALS AND RECONSIDERATION

13.3.1 General discussion

An alien may be faced with denial of a visa, entry to the United States, or postentry benefit. These denials may be based on a failure to prove qualification for visa or status, inappropriate or incomplete documentation, failure to meet procedural requirements, or other reasons.

The first avenue of recourse is usually to seek review of the decision on an informal or, where allowed, formal basis by the official who made the decision. This "reopening" or "reconsideration" of a decision is based either on facts or documents not known or available prior to the denial (reopening) or on an argument that the decision is inconsistent with the Act, regulations, operating procedures, policies, or precedent decisions (reconsideration).

In certain instances, a formal appeal may be made from the decision of an INS official to a higher-level office of INS (Administrative Appeals Unit) or to the Board of Immigration Appeals (BIA). In other instances, the regulations expressly state that there is no appeal from an INS denial. In such instances, action by a motion to reopen or reconsider a decision is the sole avenue of recourse.

13.3.2 Avenues of recourse from adverse decisions

13.3.2.1 Review of the denial of a nonimmigrant visa at an American embassy or consulate

Prospective foreign students and scholars sometimes have difficulty in obtaining visas. Reasons for denial of a visa include lack of proper documentation (such as the Form I-20 or evidence of financial support), suspected excludability (such as criminal activity), or, most often, the aliens' inability to convince the consular officer that they will return to their home countries after completing the proposed educational activity.

Visa issuance decisions are made by State Department employees at U.S. embassies or consulates abroad. INS personnel are generally not involved in these matters. By statute, a consular official has absolute authority to determine the facts that will govern the issuance of a visa and the applicant has no statutory or constitutional right to review or appeal. [Act 104(a) and 221] The constitutional and due process protections that individuals, including aliens, enjoy within the United States do not apply to aliens applying for visas. Nevertheless, the regulations allow for informal review of a consular officer's adverse determination. [22 CFR 41.121] An alien who is denied a visa must be advised of the specific reasons for the denial and given an opportunity to present evidence to overcome the stated objections. Applicants can reapply for a visa. The principal consular officer at the post, or his or her delegate, may review the denial in certain instances and either grant or deny the visa or refer the matter to the Visa Office of the Department of State for an advisory opinion. The regulations provide that the Visa Office itself may initiate the review. [22 CFR 41.121(d)] In practice, this will happen only if the applicant or an interested party, such as a foreign student adviser, requests a review by the Visa Office. The Visa Office's opinion binds the consular officer only with respect to interpretations of law, not to application of the law to the facts of a given case. To the extent a request for review of an adverse decision can be framed as a legal, rather than factual, argument, it is more likely to be entertained by the Visa Office and to have greater weight in the consular official's decision. The use of congressional intervention is usually unproductive and can even prove counterproductive. A school official who has information or a point of view that might help overcome a denial can convey that information to the consular post by mail or telephone.

13.3.2.2 Review of denial of entry at a port of entry

Possession of a nonimmigrant visa does not guarantee an alien's admission to the United States. The question of eligibility to enter the United States may be considered anew at the port of entry. [Act 235 and 236] If the inspecting officers find the alien inadmissible to the United States, the alien may request a hearing before an immigration judge, who will rule on the alien's admissibility. If, however, the alien is ruled excludable (see Section 13.2.4) at such a hearing (or upon appeal to the BIA), the alien will be statutorily barred from entry into the United States for 1 year. Either the alien or INS may appeal the judge's decision to the BIA. [8 CFR 236.7]

If certain documents are lacking, the immigration officer at the port of entry may grant the alien deferred inspection (see Section 13.2.3). The INS official at the port of entry or the immigration judge at the hearing may allow the alien to "withdraw" from attempting to enter the United States. Where the alien has made statements inconsistent with the status sought at entry (e.g., indications of immigrant intent by someone seeking F-1 status), it may be advisable for the individual to withdraw his or her application for the entry rather than risk the issuance of an exclusion order by an immigration judge. In such cases, legal advice may be desirable.

13.3.2.3 Extensions of stay

Applications for extension of stay by B, F, J, and M aliens are considered at local INS offices; all others are filed at INS service centers (see Section 11.3.2). Neither the statute nor the regulations provide for an appeal from denial of these applications. The applicant's only formal avenue for review is by means of a motion to reopen or a motion for reconsideration. The motion is submitted on Form I-290A. It may have supporting documentation from the foreign student adviser. A fee is required for either motion (see Appendix 1).

The district director's denial notice will give the reasons for the denial, usually by means of checked boxes on Form I-541. Motions to reopen should be based on new factual evidence not presented earlier and should include an explanation of why these facts had not been offered initially. Motions to reconsider are normally based on the interpretation of legal decisions and precedent rulings that have some bearing on the case at hand. [8 CFR 103.5] In actual practice, there are few sharp distinctions between these two kinds of motions, and it is not unusual for the motion to be labeled "motion to reopen and reconsider."

The filing of a motion to reopen or reconsider does not automatically serve to stay the execution of any decision made in the case or to extend a previously set departure date [8 CFR 103.5], whereas the filing of an appeal, where one is available, does serve to postpone such actions. Some INS offices will withhold action against an alien who has filed a motion to reopen or reconsider.

13.3.2.4 Petitions for certain nonimmigrant and immigrant classifications

As noted in Sections 10 and 11, aliens may not be classified as temporary workers (H-1, H-2, and H-3), fiancées or fiancés of American citizens (K-1), intracompany transferees (L-1), extraordinary-ability aliens (O-1 and O-2), internationally recognized athletes or members of internationally recognized entertainment groups (P), or international cultural exchange aliens (Q) in the absence of an approved nonimmigrant visa petition. Similarly, immigration based on family relationships or permanent job offers in the United States requires INS approval of an immigrant visa petition. Such petitions are considered by either a service center director or a district director. Adverse decisions may be appealed, in some instances to the INS Administrative Appeals Unit (AAU) and in other instances to the BIA.

Denials of petitions for eligibility under the H, K, L, O, P, and Q nonimmigrant classifications and the employment preference immigrant classifications are appealed to the AAU, which is a centralized INS appellate authority designed to ensure consistency in the interpretation of INS regulations among INS offices. Appeals must be filed on Form I-290B (Notice of Appeal), together with a filing fee, within 30 days of the date of the denial. A legal brief (if any) in support of an appeal must be filed with the appeal. If a brief is submitted, the Form I-290B is filed with the appropriate service center director or district director, as indicated on Form I-292; either director may choose to treat the appeal as a motion to reopen or reconsider and may reverse the decision without referring the matter to the AAU. Oral arguments before the AAU may be requested when filing the notice of appeal. [8 CFR 103.3(c)] It is unusual for such a request to be granted. The AAU exercises a broad scope of review and may uphold an INS decision on a basis other than that upon which the denial was founded or even considered at a lower level.

Decisions on petitions for immigrant categories based on family relationships with U.S. citizens or permanent-resident aliens are reviewed by the BIA, the "supreme court" of immigration review. An appeal to the BIA is made by filing Form I-290A with a filing fee (see Appendix 1) within 15 days. The BIA will consider a case before it de novo, that is, it will consider anew both the facts and applicable law.

13.3.2.5 Change of nonimmigrant classification

The following classes are ineligible for change in nonimmigrant classification: TWOV (transit without visa); visitor admitted under Visa Waiver Pilot Program; C; D; K; J-1 to receive graduate medical education; and J-1 subject to the 2-year home-country residence requirement, except for change to A or G. Denial by the district director or the service center director of an application to change from one nonimmigrant classification to another may not be appealed to a higher body. [8 CFR 248.3(g)] However, a motion to reopen or reconsider may be submitted to the office that denied the application. There is a 30-day time limit on filing a motion to reopen or reconsider, and a filing fee (see Appendix 1) must be included with the motion.

13.3.2.6 Certification

Certification is a process by which a district director or a service center director may ask a higher-level INS authority (usually AAU or BIA) to review a decision the director has made. The district director or service center director may choose to certify a decision even if the applicant has no right of appeal. Generally, an INS official will certify a decision only when the decision involves a unique or unprecedented application or interpretation of the law. [8 CFR 103.4] When a case has been certified, the alien or other party affected will be given an opportunity to submit a brief on the issues presented.

13.4 DEPORTATION

13.4.1 General discussion

This section describes the provisions of law related to deportation from the United States, especially those grounds of deportability likely to be of concern to foreign students and scholars.

Particular care should be taken in responding to students' inquiries concerning deportability, as the issues presented frequently involve highly technical interpretations not only of the Act itself, but also of state criminal statutes and statutes involving such subjects as marriage and divorce. Moreover, deportation has a particular legal meaning and particular interpretations. For example, not every alien who is subject to deportation is actually deported. An alien can be deported only after a formal hearing conducted in accordance with certain procedural requirements before an immigration judge. Usually, a deportable alien will be permitted by immigration authorities to leave the United States voluntarily, without the institution of formal deportation proceedings.

In addition, the concept of deportation should not be confused with that of exclusion, although the two sometimes overlap. Deportation involves the expulsion of aliens who have entered the United States. Exclusion, on the other hand, involves denying an alien legal admission into the country.

The following information, therefore, is intended only as an introduction to the topic of deportation.

13.4.2 Grounds for deportation

13.4.2.1 Failure to comply with conditions of nonimmigrant status

Because all nonimmigrants are admitted on a temporary basis for the purpose of accomplishing a particular objective, an alien's failure to leave after the objective has been accomplished may result in a finding of deportability. [Act 241(a)(1)] A student's acceptance of unauthorized employment, failure to be a full-time student, or failure to obtain timely extensions of stay are violations of the conditions upon which the student is permitted to remain in the United States. A nonimmigrant's willful failure to provide full and truthful information requested by INS (regardless of whether the information was material) constitutes a failure to maintain nonimmigrant status. [8 CFR 214.1(f)] Also, a nonimmigrant's conviction in the United States for a crime of violence for which a sentence of more than 1 year of imprisonment may be imposed (regardless of whether such sentence is in fact imposed) constitutes a failure to maintain status. [8 CFR 214.1(g)]

A failure to maintain status subjects a nonimmigrant to deportation, but immigration officials do not always institute deportation proceedings under such circumstances. Furthermore, INS may reinstate the alien to nonimmigrant status (see Section 4.10) provided the violations do not continue, particularly if the violations were not substantive or willful and are excusable.

13.4.2.2 Conviction of crime after entry

Any alien is subject to deportation for the conviction of certain offenses committed after his or her entry into the United States. Generally, conviction for those crimes described as involving moral turpitude or conviction for drug-related offenses can render an alien deportable.

An alien convicted after entry of only one crime involving moral turpitude will not be deported unless the crime was committed within 5 years of entry and results in sentence to confinement for a year or more. However, an alien convicted of two separately planned and executed crimes involving moral turpitude may be deported no matter how long after entry the crimes are committed and without regard to the severity of the sentence. The felony/misdemeanor distinction is not relevant in either instance. Of particular importance is conviction of mere possession of more than 30 grams of marijuana. Though such an offense may not be viewed as serious in other circumstances, it may have dire consequences for the alien and is a deportable offense, no matter how long the alien may have lived in the United States and no matter how long after arrival the crime was committed. Although there are ameliorative provisions in the Act by which an alien convicted of many serious crimes may avoid deportation, there are none for the alien convicted of a narcotics offense (other than a single offense involving possession for one's own use of 30 grams or less of marijuana), no matter how minimal the offense might seem to be.

Conviction of crimes other than those involving moral turpitude or narcotics may, in certain limited circumstances, render a nonimmigrant deportable. For example, serving a sentence for a crime, regardless of its particular nature, may prevent a foreign student from attending classes and thereby result indirectly in a finding that the student has failed to comply with one of the conditions of admission. Thus, it is the failure to comply with the conditions of the nonimmigrant status rather than commission of the crime that can lead to a finding of deportability. Otherwise, commission of relatively minor crimes will not ordinarily affect the duration of a nonimmigrant's stay.

Important legal concepts and interpretations are involved with respect to the meaning of such terms as "moral turpitude," determination of when an alien made an entry, what constitutes a conviction, the effect of state or federal statutes permitting the expunging of criminal convictions, and provisions for relief from actual deportation. For example, murder, rape, and larceny (grand or petty) are obvious examples of moral turpitude, while less obvious ones such as false statements and writing checks not covered by sufficient funds possibly may not involve moral turpitude. It is extremely important that the foreign student have competent legal advice.

13.4.2.3 Other grounds for deportation

Some other grounds of deportability, briefly described, are as follows:

1. **Unlawful entry**. Many aliens manage to enter the United States even though they are not legally entitled to do so. When illegal entry is discovered, the alien may be deported. Examples are aliens who enter surreptitiously and avoid inspection by immigration officers; those who gain entry by fraudulently misrepresenting or concealing facts that might otherwise have prohibited their admission; those who enter without valid documents, for example, with an invalid visa or labor certification; those who have been convicted of certain crimes prior to their arrival; aliens having certain communicable diseases or physical or mental disorders; aliens who left the United States to avoid military service; and aliens who have previously been deported and do not have permission to return. [Act 241(a)(1) and 212(a)]

2. **Membership in a communist party or other proscribed organization** before entry. [Act 241(a)(1), and 212(a)(3)]

3. Under limited circumstances, **becoming a public charge**. [Act 241(a)(5)]

4. **Being a narcotic-drug addict**. Although this provision is rarely enforced, an alien may be deported upon a finding that he or she is an addict, even though he or she may never have been convicted of a crime associated with narcotics. [Act 241(a)(2)]

5. **Assisting other aliens to enter the United States illegally**. [Act 241(a)(1), and 212(a)(6)]

13.4.3 Deportation procedures

Deportation proceedings are instituted by issuance of a "charging document," usually entitled "Order to Show Cause and Notice of Hearing." The document is designed to notify the alien of the grounds on which INS believes he or she is deportable and to advise the alien of the time and place of the deportation hearing. Additional grounds of deportability may be charged before or during the hearing. [Act 242; 8 CFR 242]

The hearing itself is subject to the constitutional requirement for a fair hearing, meaning that the alien has the right to representation of counsel (although not at government expense), the right to cross-examine witnesses, the right to present evidence in his or her own behalf, and certain other procedural rights.

It is important for foreign students and scholars to know also that they have certain rights prior to the hearing itself. For example, they have the protection of the Fourth Amendment's prohibition against unreasonable searches and seizures (although the ruling in *Matter of Sandoval*, 17 I&N 70, 1979, permits INS to use evidence found in an unreasonable search in a deportation hearing). In the opinion of some lawyers, aliens need not answer the questions of an immigration officer (although in certain circumstances they may be taken into custody for refusing to answer such questions), and they may have a lawyer present at all stages of the investigatory process.

The deportation hearing is conducted by an immigration judge (formerly called a special inquiry officer). The judge's determination of deportability, as well as issues involving relief from deportation (see Section 13.4.4), are appealable to BIA. And, in certain circumstances, an adverse ruling by the board may be reviewed in the United States Court of Appeals. [Act 106(a)]

13.4.4 Relief from deportation

As a part of the deportation hearing itself, an alien found to be deportable may avoid the impact of actual deportation by qualifying for certain ameliorative provisions of the law. [8 CFR 242.17] Deportable aliens may be granted adjustment of status [Act 245]; suspension of deportation [Act 244], which is another way of acquiring permanent residence for certain aliens who have been physically present in the United States for a continuous period of 7 years and whose deportation would result in extreme hardship to the alien or to certain members of the alien's family (the required period is extended to 10 years in some circumstances); and registry [Act 249], a method of acquiring permanent residence for aliens who have lived in the United States legally or illegally since prior to 1 January 1972.

An immigration judge may withhold the deportation of an alien on a temporary basis if, in the judge's opinion, the alien would be subject to persecution on account of race, religion, or political opinion in the country to which the alien's deportation has been ordered. [Act 243(h); United Nations Convention Relating to the Status of Refugees] A request for asylum may be made to the immigration judge even if a prior application for asylum has been denied.

Finally, if no other relief from deportation is available, the immigration judge may, in most cases, grant the alien the privilege of voluntary departure, in lieu of being deported. Although voluntary departure is really a forced departure, it permits the alien to avoid the stigma associated with being deported. Voluntary departure is also preferable for a more practical reason. An alien who is deported is ineligible for readmission to the United States within 5 years (20 years in the case of an alien convicted of an aggravated felony) unless he or she first secures INS permission to return. There is no such restriction on the alien who chooses voluntary departure. Furthermore, an alien under voluntary departure has the additional advantage of being able to request delays of the departure date (for substantial reasons). To be eligible for voluntary departure, the alien must be of good moral character and be able to pay the fare home.

13.5 Technical Matters

13.5.1 Waiver of grounds of inadmissibility under Section 212(d)(3) of the Act

For foreign students or scholars coming temporarily to the United States as nonimmigrants and who are or were members of a communist party or affiliated organization, a waiver of inadmissibility is no longer required because such people are no longer excludable from the United States.

Section 212(a) of the Act contains nine paragraphs with numerous subparagraphs listing the grounds on which an alien is considered to be ineligible for a visa or for admission to the United States. Section 212(d)(3)(A) of the Act provides that the attorney general, upon a favorable recommendation from the secretary of state, may declare that the alien will be admitted temporarily as a nonimmigrant in spite of his or her inadmissibility. This waiver of grounds of inadmissibility for temporary entry is indicated on the nonimmigrant alien's visa and Form I-94 by the notation "212(d)(3)(A)(2)," which means that the waiver under Section 212(d)(3)(A) was granted for a condition existing under Section 212(a)(2) having to do with criminal and related grounds. When this notation appears on a visa valid for reentry, the nonimmigrant alien must secure another waiver of grounds of inadmissibility in order to reenter the United States after a temporary departure. The foreign student adviser can assist such an alien by consulting the consul or the Visa Office of the Department of State in advance of the temporary departure to arrange for the preauthorization of the waiver and issuance of the visa.

Most of the grounds of inadmissibility can be waived for nonimmigrants. [Act 212(d)(3)]

13.5.2 SPLEX and CHINEX

Advisers will sometimes find the designation "SPLEX" written on a nonimmigrant's visa and Form I-94. Standing for Special Exchange Program, that designation once referred to nonimmigrants from former Soviet-bloc countries who came to the United States under special exchange agreements negotiated with those countries. At one time all nationals of former Soviet-bloc countries who came to the United States for educational or cultural exchange purposes were designated SPLEX.

Today, only citizens of Eastern European countries and the former Soviet Union who are in "sensitive" science and technology areas may carry documents with the SPLEX notation. ("Sensitive" science and technology fields are certified by the Committee on Exchanges, a working group composed of representatives from U.S. government agencies concerned with technology-transfer issues. Periodically the committee updates and amends the list which is distributed to consular posts abroad.) The SPLEX notation prevents these individuals from changing nonimmigrant status, transferring institutions, or extending their stays without prior permission from the State Department. An adviser assisting a SPLEX alien in obtaining a change of status, school transfer, or extension of stay should, in addition to the usual procedures described in the appropriate sections of the *Manual*, write to the Office of Independent States and Commonwealth Affairs (formerly the Office of Soviet Union Affairs) or the Office of Eastern Europe Affairs, Department of State, Washington, D.C. 20520, explaining the purpose of the desired transaction. Copies of all immigration documents, e.g., Form IAP-66 or Form I-539, related to the action being taken on behalf of student or scholar should be included. In addition, it is often helpful to include a letter from the participant's academic department outlining the program objective. As a general rule, advisers should allow 20 working days for the State Department to review the authorization request. If the Department of State has no objection to the transaction, within approximately 20 working days the desk officer will provide a letter to that effect. The letter must be submitted to INS along with the documents required for a change of status, school transfer, or extension of stay.

Some students and scholars from the People's Republic of China have the designation "CHINEX" on their visas and Forms I-94. That designation formerly had the same significance to advisers as SPLEX, but it no longer does. Advisers can disregard the CHINEX notation.

13.6 REFUGEES AND ASYLUM APPLICANTS

13.6.1 General discussion

The following sections discuss those provisions of the Refugee Act of 1980 most likely to be relevant to foreign students and scholars in the United States.

13.6.2 Definition of refugee

According to Section 101 (a)(42) of the Act, the term "refugee" means any person "who is unable or unwilling to return [to his or her country of nationality or country of habitual residence] ... because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."

13.6.2.1 Restrictions

Section 101(a)(42)(B) of the Act prohibits the granting of refugee status to any person who has engaged in the persecution of others. Any person deemed "firmly resettled" in a third country (e.g., having status allowing him or her to enjoy permanent residence, rights, and privileges of citizens in that third country) is also denied refugee status. [Act 207(c)(1); 8 CFR 207.1(b)]

13.6.2.2 Distinction between refugees and asylum applicants

The law clearly differentiates between refugees and asylum applicants. The term "refugee" refers to aliens outside the United States (usually in a third country, but in special circumstances they may still be located in the country of nationality and persecution). [Act 207] Section 208 of the Act refers to aliens in the United States or at a port of entry as "asylum applicants" if they meet the persecution criteria described above.

13.6.2.3 Certain grounds of excludability waived

Refugees and asylum applicants are not subject to the following provisions of Section 212(a) of the Act that would otherwise render them inadmissible to the United States: public charge provision (4), labor-certification requirement and prohibition against unqualified foreign medical graduates (5), and visa requirements (7). Other grounds found in Section 212(a) may be waived by the attorney general for "humanitarian purposes, to assure family unity, or when it is otherwise in the public interest," except for (2)(C), and (3)(A)(B)(C) and (E), relating to unlawful activity, terrorists, potential spies or saboteurs, former Nazis, and traffickers in narcotics. [Act 207(c) and 209(c)] An alien who was convicted of an aggravated felony is ineligible for asylum.

13.6.2.4 Application for refugee status

Aliens may file for refugee status with any U.S. consul. The consul will accept the application, complete initial processing, and cable the INS office having jurisdiction over the consul or post, requesting a file number and an INS officer to interview the applicant.

13.6.2.5 Application for asylum

An application for asylum is made on Form I-589, which is available at any INS office. There is need for substantive documentation of the persecution claim, consisting of documentation of political conditions in the persecuting country (in the case of some countries, the Department of State may already have sufficient documentation) and, if available, specific documentation as to why the applicant or the applicant's group would be targeted for persecution. The decision on the granting of asylum is made by the asylum officer (or immigration judge if the alien is in exclusion or deportation proceedings), but invariably an advisory opinion is sought from the Department of State. Asylum status may be terminated by the attorney general if there is a change in circumstances in the alien's country of nationality or, in the case of a stateless person, in the country in which the person last habitually resided.

13.6.3 Refugee quotas

The annual limit on the number of refugees admitted to the United States is determined in advance by the president after consultation with Congress. In Section 207(b) of the Act there is provision for exceeding such limit. The number may be increased by the president as the result of his determination, after appropriate consultation, that an unforeseen emergency exists, that the admission of certain refugees is justified by grave humanitarian concerns or is otherwise in the national interest, and that their admission cannot be accomplished in accordance with the numerical limits set for the fiscal year. On the other hand, the authority of the attorney general to parole aliens into the United States who could have proceeded through the prescribed refugee application channels has been sharply limited by Section 212(d)(5) of the Act, which permits such action only when there are "compelling reasons in the public interest with respect to that particular alien."

The spouses and unmarried children under 21 years of age of refugees are entitled to the same admission status if they accompany or follow to join the refugee and are not entitled to admission as refugees in their own right. [Act 207(c)(2)]

13.6.4 Length of time required for adjustment to permanent residence

Neither aliens who enter as refugees nor those who are granted asylum are immediately given the status of lawful permanent resident. Instead, Section 209 of the Act provides for adjustment of status after 1 year's physical presence in the United States. Admission for lawful permanent residence will be recorded as of the date of the refugee's arrival in the United States. In the case of an individual seeking asylum, permanent-resident status is made retroactive to a date 1 year before the approval of application for adjustment of status. The number of people granted asylum who will be permitted to adjust to permanent residence in any one fiscal year is limited to 10,000 [Act 209(b)]; this limit can result in waiting periods for these people.

13.7 EXTENDED VOLUNTARY DEPARTURE/ TEMPORARY PROTECTED STATUS

The attorney general may allow an individual alien or a category of aliens to remain in the United States for a finite or indefinite period of time through the use of the policy of "extended voluntary departure" (EVD). Although not provided for in the Act, this administrative invention has been used primarily to allow nationals of countries where there is a radical political change to remain in the United States (with employment authorization in most cases) pending clarification of conditions in the home country. Nationals of China, Poland, Afghanistan, Uganda, and Ethiopia have previously benefited under this program. Once granted, EVD may be withdrawn by INS at any time for a particular alien or for the entire category.

A new statutory basis for temporary protection from deportation of certain aliens was introduced into the law by the 1990 Act. Qualified aliens who are nationals of a foreign country designated by the Attorney General may be granted "temporary protected status" (TPS) by INS. An alien granted such status cannot be deported while such status is in effect, is entitled to work authorization, and, on request, may be given permission to travel abroad. The law expressly states that the granting of TPS "shall not be considered to be inconsistent with the granting of nonimmigrant status."

An alien desiring TPS must apply to INS and pay the required fee plus the fee for the application for work authorization. The application consists of Forms I-104, I-765, I-821, two fingerprint cards, two photos and supporting evidence.

To be eligible, the alien must be a national of a designated country, or a stateless person who last habitually resided in such a country. In addition, the alien must have been continuously physically present in the United States since the designation and must be admissible. The law grants exceptions from certain exclusion grounds and allows special discretionary waivers of other specified exclusion grounds. [Act 244A]

The attorney general may designate a country in which there is an ongoing armed conflict or in which a disaster has occurred (earthquake, flood, drought, epidemic, environmental disaster), or in which "extraordinary and temporary conditions" exist.

El Salvador was designated by the statute. Nationals of El Salvador granted TPS were granted a deferral of enforced departure for the period beginning 1 July 1992 and ending 30 June 1993. [*Federal Register*, 26 June 1992, p. 28700] The following countries have been designated by the attorney general as of the date of preparation of this chapter: Lebanon, Liberia, and Somalia. TPS for nationals of Kuwait expired on 27 March 1992.

13.8 STATESIDE PROCESSING

Until 31 December 1987 the Department of State and INS cooperated in a program called "stateside processing," in which certain aliens ineligible for adjustment of status in the United States could go to consular posts in Canada or Mexico to obtain immigrant visas and reenter the United States in immigrant status. That program has been terminated because of budgetary constraints. Aliens ineligible for adjustment of status in the United States must now apply for immigrant visas in the country of their citizenship or legal residence or must "shop" for another consular office that will accept their applications if no consular posts are in operation in their home countries. (For example, at the time of this writing, Iran, Libya, and Lebanon have no U.S. consular posts.)

13.9 LEGALIZATION

The Immigration Reform and Control Act of 1986 provided a means for aliens who had been in the United States illegally since 1 January 1982 to remain in the United States and become legal permanent residents (and eventually citizens, if they so desire). [Act 245A] A similar program (known as SAW) was available to certain aliens who engaged in agricultural field work for 90 days during the 12 months from May 1985 to May 1986. [Act 210]

The application period for the general legalization program was 6 May 1987 through 5 May 1988. Applications for the SAW program had to be filed between 1 June 1987 and 30 November 1988.

Upon qualifying, an alien applicant under the legalization or SAW provisions gained first temporary-resident status and, eventually, permanent-resident status. An individual who obtained permanent residence under any of the legalization provisions could eventually apply for citizenship.

Once an application was made, an alien could obtain permission to be employed, shown on Form I-688A, and to travel and reenter the United States. These privileges were continued if the application was eventually approved and the alien was issued Form I-688.

Aliens legalized under the general legalization program are able to apply for permanent residence after 18 months in temporary-resident status and must do so within the 24 months following the 18 months of temporary residence. [Act 245A(b)] There are additional requirements to be met in order to adjust to permanent residence. These include English-language and basic citizenship requirements similar to those for naturalization as a U.S. citizen. In addition, permanent residence gained under the general legalization provisions carries a 5-year bar on receipt of certain forms of public assistance.

13.10 EMPLOYER SANCTIONS

The following discussion of employer sanctions is intended to be a brief summary of the law and regulations. Readers wishing comprehensive guidance on the subject should refer to the statute, the regulations, and the *Handbook for Employers* discussed below.

The Immigration Reform and Control Act of 1986 contained two major provisions constituting the compromise that had eluded Congress for the previous 6 years—the legalization of aliens who were longtime residents of the United States and penalties for employers who hire, or continue to employ, aliens not authorized for employment in the United States. The latter provision affects every employer and every worker in the United States. The employer must verify employment eligibility and the employee must attest to employment eligibility. Form I-9 is used for this purpose.

Proponents of the employer sanctions provision asserted that the "magnet" that drew illegal immigrants to this country was the availability of employment. The only way to turn off the magnet, proponents argued, was to penalize employers who hired illegal aliens and to require employers to verify the employment status of prospective workers. In answer to opponents' charges that such requirements would result in discrimination against foreign-looking or foreign-sounding applicants for employment, the legislation included a provision to penalize employers who committed "unfair immigration-related employment practices" by discriminating on the basis of citizenship or national origin.

This so-called antidiscrimination provision is limited in its application and overlaps existing civil rights statutes. If Congress should find after 3 years of employer sanctions that they do result in discrimination, the finding could result in the termination of all provisions relating to employers under IRCA. Although the General Accounting Office did report that a widespread pattern of discrimination resulted from implementation of the employer-sanctions provision, Congress chose not to terminate it.

13.10.1 Prohibitions

IRCA sets forth three principal prohibitions affecting all employers in the United States:

1. It is unlawful knowingly to hire, recruit, or refer for a fee, after 6 November 1986, an alien not authorized for employment in the United States. [Act 274A(a)(1)]

2. It is unlawful to continue to employ an alien, other than one hired before 7 November 1986, knowing that the alien was or has become unauthorized to work. [Act 274A(a)(2); 8 CFR 274a.3]

3. It is unlawful to fail to comply with requirements for verification of an employee's work authorization and identity if that employee (whether a U.S. citizen or an alien) was hired after 6 November 1986. [Act 274A(b); 8 CFR 274a.2]

13.10.2 Unlawful hiring, recruiting, or referring for a fee

If an alien not authorized for employment provides services for remuneration to any person or entity, and if the "unauthorized" status of the alien is known to the employer, the employer is subject to penalties ranging from $250 to $10,000 per unauthorized alien, depending upon certain factors. Employers who are found to engage in a "pattern or practice" of hiring aliens not authorized for employment may even be imprisoned. [Act 274A(e) and (f); 8 CFR 274a.10]

In order for a recruitment or referral to be covered by the Act, a fee must have been paid. [8 CFR 274a.1(d) and (e)] Thus, a faculty member who recruits prospective faculty at a conference is not engaging in activity covered by IRCA unless the professor is remunerated for the recruitment. The provisions on recruitment and referral for a fee were obviously aimed at employment agencies, or "headhunters." Specifically exempted from the sanctions provision are employers of domestic workers who provide sporadic, irregular, or incidental services in a private home. [8 CFR 274a.1(h)] Employment of a regular weekly household cleaning person, or an au pair would not be exempt from employer sanctions. Utilization of an independent contractor to clean the windows of a building would not subject the building owner to employer sanctions for any cleaner not authorized to work unless the owner had knowledge of that fact.

13.10.3 Aliens authorized to work for any employer as an incident of immigration status

The following classes of aliens are authorized to work without restriction as to location or type of employment; specific employment authorization is not required: lawful permanent residents; lawful temporary residents pursuant to section 245A or 210; admitted refugees; paroled refugees; asylees; K aliens; N aliens; citizens of certain Pacific islands; aliens granted withholding of deportation under Section 243(h); and aliens granted extended voluntary departure as members of designated nationality groups. However, they must present to the employer a document or documents listed on Form I-9 (Employment Eligibility Verification). [8 CFR 274a.12(a)]

13.10.4 Aliens authorized to work for a specific employer

The following classes of aliens are authorized to work only for the specific employer for whom the alien's status was granted: A-1 and A-2 employees of foreign governments; A-3 personal employees of foreign government officials; C-2 and C-3 foreign government officials in transit; E-1 and E-2 traders and investors (principals only); F-1 students for on-campus employment; F-1 students for curricular practical training; F-1 students under the pilot off-campus employment program; G-1, G-2, and G-3 representatives to designated international organizations such as the United Nations and G-4 employees of such organizations; G-5 personal employees of G-1, G-2, G-3, and G-4 aliens; H-1, H-2, and H-3 aliens; I aliens (principals only); J-1 aliens; L-1 aliens; NATO officers and employees; personal employees of NATO employees; TC employees under section 214(e) relating to professionals under the U.S.-Canada Free Trade Agreement. They must satisfy Form I-9 requirements. [8 CFR 274a.12(b), 8 CFR 214.2(f)(10)(i)] O-1, O-2, P-1, P-2, P-3, Q, and R-1 are also authorized to work for a specific employer but are not expressly listed in 8 CFR 274 a.12(b).

A J-1 alien may be employed only by the "program sponsor or appropriate designee and within the guidelines of the program approved by the United States Information Agency as set forth in the Certificate of Eligibility (Form IAP-66)." [8 CFR 274a.12(b)(11)] An Employment Authorization Document (EAD) is not issued to any J-1 alien by INS. [8 CFR 274a.12(b)]

In the case of a J-1 student employment permission is granted in writing by the program sponsor, usually by letter. Unfortunately, neither the regulations nor the INS *Handbook for Employers* (1991 ed.) states that the sponsor's work-permission letter constitutes employment authorization for I-9 purposes. The J-1 student may present to the employer an unexpired passport, Form I-94, and the employment permission letter from the sponsor or a copy of IAP-66 showing practical training authorized, and a copy of an INS letter to NAFSA dated 11 September 1987. The INS letter explains that these documents are acceptable for I-9 purposes. INS failed to revise 8 CFR 274a.12 as promised in its letter.

13.10.5 Aliens who must apply to INS for employment authorization

The following classes of aliens must apply to INS on Form I-765 to obtain employment authorization: A-1 or A-2 spouses or dependents of foreign government officials; certain B-1 aliens such as domestic employees of specified nonimmigrants (B, E, F, H, I, J, L); spouses or dependents of E-1 employees of the Coordination Council of North American Affairs; F-1 students for postcompletion practical training; F-1 students sponsored by designated international organizations such as the United Nations; G-1, G-3, or G-4 spouses or dependents; J-2 aliens; M-1 students for practical training; dependents of aliens with NATO classification; asylum applicants; Section 245 or 249 permanent-resident applicants; Section 244 suspension applicants; parolees (other than refugees); aliens granted voluntary departure under 8 CFR 242.5(a)(2)(v)(vi) or (viii); aliens in exclusion or deportation proceedings; aliens granted deferred action status for administrative convenience; and aliens under an order of supervision under Section 242(d). Information concerning fees and supporting documents is set forth on Form I-765. [8 CFR 274a.12(c)]

In the cases of aliens applying for an EAD from INS (as distinguished from applying for extension of stay to continue employment as an A-3, E, G-5, H-1, H-2, H-3, I, J-1, L-1 or TC alien) the application is submitted to the district office on Form I-765. [8 CFR 274a.13] The fee, and any required supporting documents, as specified on the form, must be submitted with the application. Some INS offices require in-person filing, as the applicant must be photographed by INS. Other offices allow the application to be mailed and schedule an appointment for issuing the EAD. The alien may not commence employment until the EAD is issued. If the application is not adjudicated in 90 days, an interim employment authorization document will be granted with validity up to 240 days. However, notification of a denial decision automatically terminates the interim employment authorization. [8 CFR 274a.13(d)]

13.10.6 Continuing employment

Employers are not subject to penalties if they continue to employ an alien who lacks employment authorization but who was hired before 7 November 1986. [8 CFR 274a.7] These employees do not lose their "grandfathered" status even if, subsequent to 6 November 1986, they take a leave of absence and return to work, as long as the absence was for study, illness, or pregnancy; if they are transferred to another location for the same employer; or under certain other conditions [8 CFR 274a.2(b)(1)(viii)] The employment of aliens hired after the grandfathering date and whose authorization for that employment expires or whose unauthorized status is discovered by an employer must be terminated, or the employer risks penalties. [8 CFR 274a.2(b)(1)(vii) and 274a.3]

An exception to the rule requiring unexpired employment authorization exists for certain categories of aliens seeking extension of stay. The exception allows employers to continue employing an alien who (1) is in A-3, E, G-5, H-1, H-2, H-3, I, J-1, L-1, or TC status; (2) has filed in a timely manner a application for extension of stay with the same employer; and (3) has not yet received a decision on the application for extension.

Under these conditions, the alien is considered authorized for employment for a period of up to 240 days beyond the expiration of status, and an employer is neither penalized for nor required to document extended employment authorization. [8 CFR 274a.12(b)(15)] However, if the extension is denied during the 240-day period, employment must terminate.

13.10.7 Knowledge requirement

Actual or constructive knowledge of an alien's unauthorized status is required for the employer to be deemed in violation. If INS informs the employer after an I-9 check that the A number shown on the form does not relate to the alien, the employer has constructive knowledge.

13.10.8 Employment verification

Employers must verify, by examining certain documents, the individual's work authorization and identity, and attest, under penalty of perjury, to such verification on the Form I-9. [Act 274A(b)] The employee also attests, under penalty of perjury, as to his or her status as a U.S. citizen or as an alien authorized for that particular employment at that time. Regulations provide for a variety of documents that may be presented to verify status, some providing both identity and employment authorization and some providing either one or the other. [8 CFR 274a.2(b)(1)]

Employers must verify the status of all employees, citizens and aliens alike. The documents examined must reasonably appear on their face to be genuine. [*Handbook for Employers*, M-274, p. 3] Regulations also point out the type of employment for which each class of alien is authorized. [8 CFR 274a.12] For example, a U.S. citizen or resident alien is not limited as to the type or duration of employment, whereas certain other classes of aliens have specific regulatory restrictions as to the kind of employment, the employer, or the duration of employment. For example, an H-1 temporary worker has employer-specific authorization, while a J-2 exchange-visitor dependent who is authorized for employment is not restricted to a particular employer.

The verification process must be completed no later than 3 business days after the individual begins providing services, except where the employment is for a period of less than 3 days, in which case verification must be completed at the time of the hire. [8 CFR 274a.2(b)(1)(ii) and (iii)] Regulations provide for exceptions where an original document has been lost and application has been made for a duplicate, and in other circumstances. [8 CFR 274a.2(b)(1)(vi)]

Once completed, the Form I-9 and any copies made of documents examined to verify status must be retained for at least 3 years, or for 1 year after date of the employee's termination, whichever is later. [Act 274A(b)(3); 8 CFR 274a.2(b)(2)]

An employer's failure to review documents verifying identity and employment authorization, to complete the Form I-9, or to retain the form for the requisite period could result in fines of from $100 to $1,000 per individual. [Act 274A(e)(5); 8 CFR 274a.10]

13.10.9 Inspection of employer records

Officials of INS, the Office of Special Counsel, and the Department of Labor officials may, without a warrant or subpoena, demand access to an employer's records to assure compliance with the verification requirements. [Act 274A(b)(3)] An employer must provide access to the Forms I-9, and any copies of documents verifying status kept with the forms within 3 business days of a request by these officials. [8 CFR 274a.2(b)(2)(ii)]

13.10.10 Verification as an affirmative defense

When an employer can demonstrate good-faith compliance with the verification provisions, the employer will be shielded from liability for hiring an unauthorized alien. [Act 274A(a)(3); 8 CFR 274a.4] Under certain circumstances, an employer may rely on a state employment agency's referral of an individual and verification of that individual's status. [8 CFR 274a.6]

13.10.11 Multisite employers

When an employer has distinct, physically separated subdivisions and each separately hires, recruits, or refers for a fee and is not under the common control of a central hiring authority, each site will be considered a separate employer for purposes of the employer penalties. Separate campuses of a state university system may be considered separate employers under this provision. This would lessen the possibility of such a system's being considered a multiple offender or practitioner of a pattern or practice based on a few violations at each campus.

13.10.12 Unfair immigration-related employment practices

IRCA provides for protection against discrimination in employment practices based on citizenship (or "intending citizenship") or national origin. This provision covers employers of four or more individuals only and allows an employer to prefer a U.S. citizen if the citizen and an alien are "equally qualified" [Act 274B(a)(4)] or if the preference is required by federal, state, or local law. [Act 274B(a)(2)(C)] An example of the latter would be a federal grant requiring U.S. citizenship as a prerequisite to being paid from the grant funds. To the extent that an allegation of discrimination on the basis of national origin is covered by other civil rights law provisions, the unfair immigration-related employment practice provisions do not apply. [Act 274B(a)(2)(B)] In general, the unfair employment practice provisions of IRCA are intended to penalize employers who go beyond the requirements of the verification process. Employers who verify only the status of aliens or foreign-appearing or foreign-sounding applicants will be exposed to liability under these provisions, if not under other civil rights provisions. It is generally accepted that this section of IRCA does not provide special or additional antidiscrimination protection to nonimmigrant aliens authorized to work who experience discrimination based on citizenship. Nonimmigrants may find possible remedies under equal-opportunity employment laws if the discrimination is based on national origin. Under the 1990 Immigration Act it is an unfair immigration-related employment practice to specify more or different documents than are required for employment verification on Form I-9. [Act 274B(a)(6)]

APPENDIX 1

Fee Schedule

I-17	Petition for Approval of School for Attendance by Nonimmigrant Alien Students	$130.00
I-90	Application by Lawful Permanent Resident Alien for Alien Registration Receipt Card, Form I-551	$ 70.00
I-102	Application by Nonimmigrant Alien for Replacement of Arrival Document	$ 50.00
I-129	Petition to Classify Nonimmigrant as a Temporary Worker Base fee: $70. Additional $80 for change of status; $50 for extension of stay	
I-130	Petition for Alien Relative, Fiancé, or Orphan	$ 75.00
I-131	Application for Issuance of Permit to Reenter the United States	$ 65.00
I-140	Petition for Prospective Immigrant Employee	$ 70.00
I-290A	Notice of Appeal to the Board of Immigration Appeals	$110.00
I-290B	Notice of Appeal to Regional Commissioner	$110.00
I-485	Application for Permanent Residence $120 (over 14 years of age); $95 (under 14)	
I-538	Notification by Designated School Official for Nonimmigrant Student Program Extension, School Transfer, or to Accept or Continue Employment	No fee
I-539 (old)	Application to Extend Time of Temporary Stay	$ 70.00
I-539 (new)	Application to Extend Status/Change Nonimmigrant Status ($10 per co-applicant)	$ 70.00
I-566	Interagency Record of Individual Requesting Change/Adjustment to or from A or G Status, or Requesting A or G Dependent Employment Authorization	No fee
I-589	Request for Asylum in the United States	No fee
I-612	Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act, as Amended	$ 90.00
I-751	Joint Petition to Remove the Conditional Basis of Alien's Permanent Residence Status	$ 65.00
I-752	Application for Waiver of Requirement to File Joint Petition for Removal of Conditions	$ 85.00
I-765	Application for Employment Authorization (cash accepted)	$ 60.00

N-400	Application to File Petition for Naturalization	$ 90.00
N-600	Application for Certificate of Citizenship	$ 90.00
	Motion to Reopen or Reconsider Submitted to INS	$110.00
	Motion to Reopen or Reconsider Submitted to Immigration Judge or to Board of Immigration Appeals	$110.00
	Request for Classification of a Citizen of Canada to be Engaged in Business Activities pursuant to the U.S.-Canada Free Trade Agreement	$ 50.00
ETA-750	Application for Alien Labor Certification	No fee
ETA-9029	Health Facility Labor Attestation	No fee
ETA-9034	Attestation by Employers for Off-campus Work Authorization for F-1 Students	No fee
ETA-9035	Labor Condition Application	No fee

The payment of fees must be made in the form of a personal or cashier's check or money order made payable to the Immigration and Naturalization Service, U.S. Department of Justice. Cash will not be accepted unless otherwise noted.

The regulations provide for waiver of a fee if an applicant can demonstrate to the satisfaction of INS that he or she is unable to pay the fee. The fee schedule should not prohibit application or requests on the basis of inability to pay. [8 CFR 103.7 (c)(1)] Requests for waivers of fees may cause serious delays in adjudication of application and may also raise the question of financial capability. Waivers should be requested only when absolutely necessary.

APPENDIX 2

Immigration Forms

The following is a list of immigration forms that advisers can expect to see or need to identify. For a complete list of INS forms, see 8 CFR 299.1 and 332a.2.

AR-11	Change of Address Card
CI	Certificate of Identity
G-325	Biographic Information
I-9	Employment Eligibility Verification
I-17	Petition for Approval of School for Attendance by Nonimmigrant Alien Students
I-20A-B	Certificate of Eligibility for Nonimmigrant (F-1) Student Status—For Academic and Language Students
I-20M-N	Certificate of Eligibility for Nonimmigrant (M-1) Student Status—For Vocational Students
I-20ID Copy	
I-90	Application by Lawful Permanent Resident Alien for Alien Registration Receipt Card
I-94	Arrival/Departure Record
I-102	Application by Nonimmigrant Alien for Replacement of Arrival Document
I-126	Report of Status by Treaty Trader or Investor
I-129	Petition to Classify Nonimmigrant as a Temporary Worker
I-130	Petition for Alien Relative, Fiancé, or Orphan
I-131	Application for Issuance of Permit to Reenter the United States
I-134	Affidavit of Support
I-140	Petition for Prospective Immigrant Employee
I-151	Alien Registration Receipt Card
I-175	Nonresident Alien Canadian Border Crossing Card
I-190	Nonresident Alien Mexican Border Crossing Card
I-193	Application for Waiver of Passport and/or Visa
I-212	Application for Permission to Reapply for Admission into the United States after Deportation or Removal
I-290A	Notice of Appeal to the Board of Immigration Appeals
I-290B	Notice of Appeal to Regional Commissioner
I-485	Application for Permanent Residence
I-515	Notice to Student or Exchange Visitor Admitted without I-20 or IAP-66
I-516	Notice of School Approval
I-538	Notification by Designated School Official for Nonimmigrant Student Program Extension, School Transfer, or to Accept or Continue Employment
I-539 (old)	Application to Extend Time of Temporary Stay
I-539 (new)	Application to Extend Status/Change Nonimmigrant Status
I-566	Interagency Record of Individual Requesting Change/Adjustment to or from A or G Status, or Requesting A or G Dependent Employment Authorization
I-589	Request for Asylum in the United States

I-612	Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act, as Amended
I-688	Temporary Resident Card
I-688B	Employment Authorization Document
I-751	Joint Petition to Remove the Conditional Basis of Alien's Permanent Residence Status
I-752	Application for Waiver of Requirement to File Joint Petition for Removal of Conditions
I-765	Application for Employment Authorization
I-775	Visa Waiver Pilot Program Agreement
I-791	Visa Waiver Pilot Program Information Form
I-797	Notice of Action
I-821	Temporary Protected Status Eligibility Questionnaire
N-400	Application to File Petition for Naturalization
N-600	Application for Certificate of Citizenship
OF-156	Application for Nonimmigrant Visa

United States Information Agency Forms

IAP-37	Exchange Visitor Program Application
IAP-66	Certificate of Eligibility for Exchange Visitor (J-1) Status
IAP-87	Update of Information on Exchange Visitor Program Sponsor

Department of Labor Forms

ETA-750	Application for Alien Labor Certification
ETA-9029	Health Facility Labor Attestation
ETA-9034	Attestation by Employers for Off-campus Work Authorization for F-1 Students
ETA-9035	Labor Condition Application

APPENDIX 3

Sample Forms

AR-11	Change of Address Card
I-9	Employment Eligibility Verification
I-17	Petition for Approval of School for Attendance by Nonimmigrant Alien Students
I-20A-B	Certificate of Eligibility for Nonimmigrant (F-1) Student Status—For Academic and Language Students
I-20M-N	Certificate of Eligibility for Nonimmigrant (M-1) Student Status—For Vocational Students
I-94	Arrival/Departure Record
I-102	Application by Nonimmigrant Alien for Replacement of Arrival Document
I-129	Petition to Classify Nonimmigrant as a Temporary Worker
I-130	Petition for Alien Relative, Fiancé, or Orphan
I-134	Affidavit of Support
I-140	Petition for Prospective Immigrant Employee
I-515	Notice to Student or Exchange Visitor Admitted without I-20 or IAP-66
I-538	Notification by Designated School Official for Nonimmigrant Student Program Extension, School Transfer, or to Accept or Continue Employment
I-539 (new)	Application to Extend Status/Change Nonimmigrant Status
I-688B	Employment Authorization Document
I-765	Application for Employment Authorization

United States Information Agency Forms

IAP-66	Certificate of Eligibility for Exchange Visitor (J-1) Status

Department of Labor Forms

ETA-750	Application for Alien Labor Certification
ETA-9034	Attestation by Employers for Off-campus Work Authorization for F-1 Students
ETA-9035	Labor Condition Application

NAME (Last in CAPS) (First) (Middle)

I AM IN THE UNITED STATES AS:

☐ Visitor ☐ Permanent Resident

☐ Student ☐ Other______________ (Specify)

COUNTRY OF CITIZENSHIP

DATE OF BIRTH

COPY NUMBER FROM ALIEN CARD

A

PRESENT ADDRESS (Street or rural route) (City or Post Office) (State) (ZIP Code)

(IF ABOVE ADDRESS IS TEMPORARY) I expect to remain there _______ years _______ months

LAST ADDRESS (Street or rural route) (City or Post Office) (State) (ZIP Code)

I WORK FOR OR ATTEND SCHOOL AT: (Employer's Name or Name of School)

(Street Address or rural route) (City or Post Office) (State) (ZIP Code)

PORT OF ENTRY INTO U.S.

DATE OF ENTRY INTO U.S.

IF NOT A PERMANENT RESIDENT, MY STAY IN THE U.S. EXPIRES ON: (Date)

SIGNATURE

DATE / /

AR-11 (Rev. 3-21-79)N **OMB Appvd. No. 43-R0038**

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. 1115-0136
Employment Eligibility Verification

Please read instructions carefully before completing this form. The instructions must be available during completion of this form. ANTI-DISCRIMINATION NOTICE. It is illegal to discriminate against work eligible individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because of a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification. To be completed and signed by employee at the time employment begins

Print Name: Last First Middle Initial | Maiden Name

Address *(Street Name and Number)* Apt. # | Date of Birth *(month/day/year)*

City State Zip Code | Social Security #

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):
☐ A citizen or national of the United States
☐ A Lawful Permanent Resident (Alien # A ________
☐ An alien authorized to work until ___/___/___
(Alien # or Admission # ________

Employee's Signature | Date *(month/day/year)*

Preparer and/or Translator Certification. *(To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.*

Preparer's/Translator's Signature | Print Name

Address *(Street Name and Number, City, State, Zip Code)* | Date *(month/day/year)*

Section 2. Employer Review and Verification. To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C as listed on the reverse of this form and record the title, number and expiration date, if any, of the document(s)

	List A	OR	List B	AND	List C
Document title:	________		________		________
Issuing authority:	________		________		________
Document #:	________		________		________
Expiration Date *(if any)*:	___/___/___		___/___/___		___/___/___
Document #:	________				
Expiration Date *(if any)*:	___/___/___				

CERTIFICATION - I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on *(month/day/year)* ___/___/___ **and that to the best of my knowledge the employee is eligible to work in the United States. (State employment agencies may omit the date the employee began employment).**

Signature of Employer or Authorized Representative | Print Name | Title

Business or Organization Name | Address *(Street Name and Number, City, State, Zip Code)* | Date *(month/day/year)*

Section 3. Updating and Reverification. To be completed and signed by employer

A. New Name *(if applicable)* | B. Date of rehire *(month/day/year) (if applicable)*

C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment eligibility.
Document Title: ________ Document #: ________ Expiration Date (if any): ___/___/___

I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative | Date *(month/day/year)*

Form I-9 (Rev. 11-21-91) N

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LISTS OF ACCEPTABLE DOCUMENTS

LIST A

Documents that Establish Both Identity and Employment Eligibility

1. U.S. Passport (unexpired or expired)
2. Certificate of U.S. Citizenship *(INS Form N-560 or N-561)*
3. Certificate of Naturalization *(INS Form N-550 or N-570)*
4. Unexpired foreign passport, with *I-551 stamp or* attached *INS Form I-94* indicating unexpired employment authorization
5. Alien Registration Receipt Card with photograph *(INS Form I-151 or I-551)*
6. Unexpired Temporary Resident Card *(INS Form I-688)*
7. Unexpired Employment Authorization Card *(INS Form I-688A)*
8. Unexpired Reentry Permit *(INS Form I-327)*
9. Unexpired Refugee Travel Document *(INS Form I-571)*
10. Unexpired Employment Authorization Document issued by the INS which contains a photograph *(INS Form I-688B)*

OR

LIST B

Documents that Establish Identity

1. Driver's license or ID card issued by a state or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, sex, height, eye color, and address
2. ID card issued by federal, state, or local government agencies or entities provided it contains a photograph or information such as name, date of birth, sex, height, eye color, and address
3. School ID card with a photograph
4. Voter's registration card
5. U.S. Military card or draft record
6. Military dependent's ID card
7. U.S. Coast Guard Merchant Mariner Card
8. Native American tribal document
9. Driver's license issued by a Canadian government authority

For persons under age 18 who are unable to present a document listed above:

10. School record or report card
11. Clinic, doctor, or hospital record
12. Day-care or nursery school record

AND

LIST C

Documents that Establish Employment Eligibility

1. U.S. social security card issued by the Social Security Administration *(other than a card stating it is not valid for employment)*
2. Certification of Birth Abroad issued by the Department of State *(Form FS-545 or Form DS-1350)*
3. Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal
4. Native American tribal document
5. U.S. Citizen ID Card *(INS Form I-197)*
6. ID Card for use of Resident Citizen in the United States *(INS Form I-179)*
7. Unexpired employment authorization document issued by the INS *(other than those listed under List A)*

SAMPLE FORM I-9

Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274)

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U.S. DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

Petition for Approval of School for
Attendance by Nonimmigrant Students

OMB 1115-0070
Exp. 4-86

INS USE ONLY

School Code ___ ___ ___ 214F ___ ___ ___ ___

Approval for attendance of students under:
1. ☐ Section 101(a)(15)(F) of the Act.
2. ☐ Section 101(a)(15)(M) of the Act.
3. ☐ Both of the above sections of the Act.

This request is to:
1. ☐ Create a file.
2. ☐ Update a file.

Fee Stamp

Date of Approval

DD

District

This section is to be COMPLETED BY THE SCHOOL - DO NOT WRITE ABOVE THIS LINE - (Please read instructions before filling in form.) If you need more space to answer fully any items on this form, use a separate sheet; identify each answer with the letter and number of the corresponding item, and sign and date each sheet.

PRESS FIRMLY - LEGIBLE COPY REQUIRED

TO THE IMMIGRATION AND NATURALIZATION SERVICE:

1. Petition is made for approval, or continuation of approval, of this institution as a school for attendance by nonimmigrant alien students under (complete as appropriate):
   a. ☐ Section 101(a)(15)(F) of the Act (academic and language students),
   b. ☐ Section 101(a)(15)(M) of the Act (vocational students),
   c. ☐ Both of the above sections of the Act, and the following statement of fact is submitted:

2. Name of school

3. Mailing address of school

SAMPLE FORM I-17

4. This school is a:
   a. ☐ Public Institution (Leave No. 10 blank. Please note that no fee is required. See instruction No. 2)
   b. ☐ Private Institution (Complete No. 10).

5. This school is engaged in: (Check appropriate blocks and explain further if necessary).
   a. ☐ Primary Education
   b. ☐ High School Education (Academic or Vocational)
   c. ☐ Vocational or Technical Education (Other than High School)
   d. ☐ Language Training
   e. ☐ Higher Education (issuing one or more of the following degrees: Associate, Bachelor's, Master's, PhD)
   f. ☐ Other (identify) ______________________________

6. This school's sessions are based on:
   a. ☐ Semesters
   b. ☐ Trimesters
   c. ☐ Quarters
   d. ☐ Other (explain) ______________________________

7. Provide the date (month and day) registration begins for EACH session during a calendar year, including the summer session if your school has one. If there is no beginning registration date, please explain. If there are more than five sessions in your school, do NOT enter any information in this space, but list all beginning registration dates on a piece of paper attached to this form.
   a. ______________________________
   b. ______________________________
   c. ______________________________
   d. ______________________________
   e. ______________________________

Form I-17 (Rev 4-4-83) N

Please continue on Page 2

RECEIVED	TRANS IN	RET'D-TRANS OUT	COMPLETED

8. Date school was established

9. Location of school (if different from mailing address)

10. Name and address of owner

11. a. ☐ Petition is for initial approval. (See instruction No. 2)
b. ☐ Petition is for continuation of approval (See instructions No. 2 and 9). If for continuation, complete the following:
(i) Date of original approval ____________________
(ii) INS File Number ____________________

12. The school operates under the following Federal, state, local, or other authorization (If none, write "none"):

13. The school has been approved by the following national, regional, or state accrediting association or agency (If none, write "none"):

14. Nature of subject matter taught (check as many as are appropriate):
a. ☐ Liberal Arts
b. ☐ Fine Arts
c. ☐ Language
d. ☐ Religion
e. ☐ Professional Studies
f. ☐ Vocational or Technical Training
g. ☐ Other (Explain) ____________________
____
____

15. List the degrees available from your school.

16. Check as appropriate and explain further if necessary:
If the school is engaged in elementary or secondary education, it ☐ does ☐ does not qualify its graduates for acceptance by accredited schools of higher educational level. ____________________
____

If the school is engaged in higher education, it ☐ does ☐ does not confer recognized bachelor's, master's, doctor's, professional, or divinity degrees. Its credits ☐ are ☐ are not recognized by and transferable to institutions of study which confer degrees. ____________________
____

If the school is engaged in vocational or technical education, it ☐ does ☐ does not qualify its graduates for employment in the occupations for which preparation is offered. ____________________
____

SAMPLE FORM I-17

17. Sessions are held as follows;
a. ☐ Day Only b. ☐ Night Only c. ☐ Day and Night

18. Requirements for admission:

19. Courses of study and time necessary to complete each:

20. Requirements for graduation:

21. Causes for expulsion:

22. Average annual number of
a. Classes ____________ c. Teachers or Instructors ____________
b. Students ____________ d. Non-teaching employees ____________

23. Approximate annual total cost of room, board, tuition, etc., per student $ ____________

Please continue on Page 3

If the school is approved, THE PETITIONER AGREES:

1. Upon acceptance of any nonimmigrant alien student, to furnish that student a Certificate of Eligibility (Immigration and Naturalization Service Form I-20A/B for an F-1 student or Form I-20M/N for an M-1 student).

2. To keep records containing the following specific information and documents relating to each nonimmigrant F-1 or M-1 student to whom the school issues a Form I-20A/B or I-20M/N, while the student is attending the school and until the school notifies the Service, in accordance with Immigration and Naturalization Service regulations, that the student is no longer pursuing a full course of study. The school must keep a record of having complied with the reporting requirements for at least one year. If a student who is out of status is restored to status, the school the student is attending is responsible for maintaining these records following receipt of notification from the Service that the student has been restored to status. The designated school official must make the following information and documents available to or furnish them to the Immigration and Naturalization Service upon request. The information and documents which the school must keep on each student are as follows:

1. The admission number from the student's Form I-20 ID copy.
2. Country of citizenship.
3. Address and telephone number in the United States.
4. Status, i.e., full-time or part-time.
5. Course load.
6. Date of commencement of studies.
7. Degree program and field of study.
8. Expected date of completion.
9. Nonimmigrant classification.
10. Termination date and reason, if known.
11. The documents which show the scholastic ability and financial status on which the student's admission to the school was based.
12. Information specified by the Service as necessary to identify the student, such as date and place of birth, and to determine the student's immigration status.

3. That in any advertisement, catalog, brochure, pamphlet, literature, or other material printed or reprinted by or for this school, any statement which may appear in that material concerning approval for attendance by nonimmigrant students must be limited solely to the following:

"This school is authorized under Federal law to enroll nonimmigrant alien students."

I CERTIFY that I am authorized to execute this petition. I understand that unless this institution fully complies with all terms as described on this form, approval may be withdrawn.

SAMPLE FORM I-17

Dated at ______________________________, this ______ day of __________, 19 ____.

Signature ______________________________

Title ______________________________

(CORPORATE SEAL
OF INSTITUTION)

U.S. Department of Justice
Immigration and Naturalization Service
Please Read Instructions on Page 2

Certificate of Eligibility for Nonimmigrant (F-1) Student Status - For Academic and Language Students

OMB No. 1115-0051

Page 1

This page must be completed and signed in the U.S. by a designated school official.

1. Family Name (surname)
First (given) name (do not enter middle name)
Country of birth
Date of birth (mo./day/year)
Country of citizenship
Admission number (Complete if known)

For Immigration Official Use
Visa issuing post
Date Visa issued
Reinstated, extension granted to:

2. School (school district) name
School official to be notified of student's arrival in U.S. (Name and Title)
School address (include zip code)
School code (including 3-digit suffix, if any) and approval date
__________ 214F __________ approved on __________

3. This certificate is issued to the student named above for:
(Check and fill out as appropriate)
a. ☐ Initial attendance at this school.
b. ☐ Continued attendance at this school.
c. ☐ School transfer.
Transferred from __________
d. ☐ Use by dependents for entering the United States.
e. ☐ Other __________.

4. Level of education the student is pursuing or will pursue in the United States:
(check only one)
a. ☐ Primary
b. ☐ Secondary
c. ☐ Associate
d. ☐ Bachelor's
e. ☐ Master's
f. ☐ Doctorate
g. ☐ Language training
h. ☐ Other

5. The student named above has been accepted for a full course of study at this school, majoring in __________.
The student is expected to report to the school not later than (date) __________ and complete studies not later than (date) __________
The normal length of study is __________.

6. ☐ English proficiency is required:
☐ The student has the required English proficiency.
☐ The student is not yet proficient, English instructions will be given at the school.
☐ English proficiency is not required because __________

7. This school estimates the student's average costs for an academic term of _____ (up to 12) months to be:
a. Tuition and fees $ __________
b. Living expenses $ __________
c. Expenses of dependents $ __________
d. Other (specify): $ __________
Total $ __________

8. This school has information showing the following as the student's means of support, estimated for an academic term of _____ months (Use the same number of months given in item 7).
a. Student's personal funds $ __________
b. Funds from this school $ __________
(specify type)
c. Funds from another source $ __________
(specify type and source)
d. On-campus employment (if any) $ __________
Total $ __________

9. Remarks: __________

SAMPLE FORM I-20 A-B

I-20 SCHOOL

10. School Certification: I certify under penalty of perjury that all information provided above in items 1 through 8 was completed before I signed this form and is true and correct; I executed this form in the United States after review and evaluation in the United States by me or other officials of the school of the student's application, transcripts or other records of courses taken and proof of financial responsibility, which were received at the school prior to the execution of this form; the school has determined that the above named student's qualifications meet all standards for admission to the school; the student will be required to pursue a full course of study as defined by 8 CFR 214.2(f)(6); I am a designated official of the above named school and I am authorized to issue this form.

Signature of designated school official — Name of school official (print or type) — Title — Date issued — Place issued (city and state)

11. Student Certification: I have read and agreed to comply with the terms and conditions of my admission and those of any extension of stay as specified on page 2. I certify that all information provided on this form refers specifically to me and is true and correct to the best of my knowledge. I certify that I seek to enter or remain in the United States temporarily, and solely for the purpose of pursuing a full course of study at the school named on Page 1 of this form. I also authorize the named school to release any information from my records which is needed by the INS pursuant to 8 CFR 214.3(g) to determine my nonimmigrant status.

Signature of student — Name of student — Date

Signature of parent or guardian if student is under 18 — Name of parent/guardian (Print or type) — Address(city) — (State or province) — (Country) — (Date)

Form I-20 A-B/I-20ID (Rev 04-27-88)N

For official use only
Microfilm Index Number

Authority for collecting the information on this and related student forms is contained in 8 U.S.C. 1101 and 1184. The information solicited will be used by the Department of State and the Immigration and Naturalization Service to determine eligibility for the benefits requested.

INSTRUCTIONS TO DESIGNATED SCHOOL OFFICIALS

1. **The law provides severe penalties for knowingly and willfully falsifying or concealing a material fact, or using any false document in the submission of this form.** Designated school officials should consult regulations pertaining to the issuance of Form I-20 A-B at 8 CFR 214.3 (K) before completing this form. Failure to comply with these regulations may result in the withdrawal of the school approval for attendance by foreign students by the Immigration and Naturalization Service (8 CFR 214.4).

2. **ISSUANCE OF FORM I-20 A-B.** Designated school officials may issue a Form I-20 A-B to a student who fits into one of the following categories, if the student has been accepted for full-time attendance at the institution: a) a prospective F-1 nonimmigrant student; b) an F-1 transfer student; c) an F-1 student advancing to a higher educational level at the same institution; d) an out of status student seeking reinstatement. The form may also be issued to the dependent spouse or child of an F-1 student for securing entry into the United States.

When issuing a Form I-20 A-B, designated school officials should complete the student's admission number whenever possible to ensure proper data entry and record keeping.

3. **ENDORSEMENT OF PAGE 4 FOR REENTRY.** Designated school officials may endorse page 4 of the Form I-20 A-B for reentry if the student and/or the F-2 dependents is to leave the United States temporarily This should be done only when the information on the Form I-20 remains unchanged. If there have been substantial changes in item 4, 5, 7, or 8, a new Form I-20 A-B should be issued.

4 **REPORTING REQUIREMENT.** Designated school official should always forward the top page of the Form I-20 A-B to the INS data processing center at P.O. Box 140, London, Kentucky 40741 for data entry except when the form is issued to an F-1 student for initial entry or reentry into the United States, or for reinstatement to student status. (Requests for reinstatement should be sent to the Immigration and Naturalization Service district office having jurisdiction over the student's temporary residence in this country.)

The INS data processing center will return this top page to the issuing school for disposal after data entry and microfilming.

5. **CERTIFICATION.** Designated school officials should certify on the bottom part of page 1 of this form that the Form I-20 A-B is completed and issued in accordance with the pertinent regulations. The designated school official should remove the carbon sheet from the completed and signed Form I-20 A-B before forwarding it to the student.

6. **ADMISSION RECORDS.** Since the Immigration and Naturalization Service may request information concerning the student's immigration status for various reasons, designated school officials should retain all evidence which shows the scholastic ability and financial status on which admission was based, until the school has reported the student's termination of studies to the Immigration and Naturalization Service.

INSTRUCTIONS TO STUDENTS

1. **Student Certification.** You should read everything on this page carefully and be sure that you understand the terms and conditions concerning your admission and stay in the United States as a nonimmigrant student before you sign the student certification on the bottom part of page 1. **The law provides severe penalties for knowingly and willfully falsifying or concealing a material fact, or using any false document in the submission of this form.**

2. **ADMISSION.** A nonimmigrant student may be admitted for duration of status. This means that you are authorized to stay in the United States for the entire length of time during which you are enrolled as a full-time student in an educational program and any period of authorized practical training plus sixty days. While in the United States, you must maintain a valid foreign passport unless you are exempt from passport requirements.

You may continue from one educational level to another, such as progressing from high school to a bachelor's program or a bachelor's program to a master's program, etc., simply by invoking the procedures for school transfers.

3. **SCHOOL.** For **initial** admission, you must attend the school specified on your visa. If you have a Form I-20 A-B from more than one school, it is important to have the name of the school you intend to attend specified on your visa by presenting a Form I-20 A-B from that school to the visa issuing consular officer. Failure to attend the specified school will result in the loss of your student status and subject you to deportation.

4. **REENTRY.** A nonimmigrant student may be readmitted after a temporary absence of five months or less from the United States, if the student is otherwise admissible. You may be readmitted by presenting a valid foreign passport, a valid visa, and either a new Form I-20 A-B or a page 4 of the Form I-20 A-B (the I-20 ID Copy) properly endorsed for reentry if the information on the I-20 form is current.

5. **TRANSFER.** A nonimmigrant student is permitted to transfer to a different school provided the transfer procedure is followed. To transfer school, you should first notify the school you are attending of the intent to transfer, then obtain a Form I-20 A-B from the school you intend to attend. Transfer will be effected only if you return the Form I-20 A-B to the designated school official within 15 days of beginning attendance at the new school. The designated school official will then report the transfer to the Immigration and Naturalization Service.

6. **EXTENSION OF STAY.** If you cannot complete the educational program after having been in student status for longer than the anticipated length of the program plus a grace period in a single educational level, or for more than eight consecutive years, you must apply for extension of stay. An application for extension of stay on a Form I-538 should be filed with the Immigration and Naturalization Service district office having jurisdiction over your school at least 15 days but no more than 60 days before the expiration of your authorized stay.

7. **EMPLOYMENT.** As an F-1 student, you are not permitted to work off-campus or to engage in business without specific employment authorization. After your first year in F-1 student status, you may apply for employment authorization on Form I-538 based on financial needs arising after receiving student status, or the need to obtain practical training.

8. **Notice of Address.** If you move, you must submit a notice within 10 days of the change of address to the Immigration and Naturalization Service (Form AR-11 is available at any INS office.)

9. **Arrival/Departure.** When you leave the United States, you must surrender your Form I-94 Departure Record. Please see the back side of Form I-94 for detailed instructions. You do not have to turn in the I-94 if you are visiting Canada, Mexico, or adjacent islands other than Cuba for less than 30 days.

10. **Financial Support.** You must demonstrate that you are financially able to support yourself for the entire period of stay in the United States while pursuing a full course of study. You are required to attach documentary evidence of means of support.

11. **Authorization to Release Information by School.** To comply with requests from the United States Immigration & Naturalization Service for information concerning your immigration status, you are required to give authorization to the named school to release such information from your records. The school will provide the Service your name, country of birth, current address, and any other information on a regular basis or upon request.

12. **Penalty.** To maintain your nonimmigrant student status, you must be enrolled as a full-time student at the school you are authorized to attend. You may engage in employment only when you have received permission to work. Failure to comply with these regulations will result in the loss of your student status and subject you to deportation.

BEST COPY AVAILABLE

U.S. Department of Justice
Immigration and Naturalization Service
Please Read Instructions on Page 2

Certificate of Eligibility for Nonimmigrant (F-1) Student Status - For Academic and Language Students

OMB No. 1115-0051

This page must be completed and signed in the U.S. by a designated school official.

1.

Family Name (surname)	
First (given) name (do not enter middle name)	
Country of birth	Date of birth (mo./day/year)
Country of citizenship	Admission number (Complete if known)

For Immigration Official Use	
Visa issuing post	Date Visa issued
Reinstated, extension granted to:	

2.

School (school district) name
School official to be notified of student's arrival in U.S. (Name and Title)
School address (include zip code)
School code (including 3-digit suffix, if any) and approval date ________214F ________ approved on ________

3. This certificate is issued to the student named above for:
(Check and fill out as appropriate)
a. ☐ Initial attendance at this school.
b. ☐ Continued attendance at this school.
c. ☐ School transfer.
Transferred from ________
d. ☐ Use by dependents for entering the United States.
e. ☐ Other ________

4. Level of education the student is pursuing or will pursue in the United States:
(check only one)
a. ☐ Primary
b. ☐ Secondary
c. ☐ Associate
d. ☐ Bachelor's
e. ☐ Master's
f. ☐ Doctorate
g. ☐ Language training
h. ☐ Other

5. The student named above has been accepted for a full course of study at this school, majoring in ________.
The student is expected to report to the school not later than (date) ________ and complete studies not later than (date) ________
The normal length of study is ________.

6. ☐ English proficiency is required:
☐ The student has the required English proficiency.
☐ The student is not yet proficient, English instructions will be given at the school.
☐ English proficiency is not required because ________

7. This school estimates the student's average costs for an academic term of ______ (up to 12) months to be:
a. Tuition and fees $ ________
b. Living expenses $ ________
c. Expenses of dependents $ ________
d. Other (specify): $ ________
Total $ ________

8. This school has information showing the following as the student's means of support, estimated for an academic term of _____ months (Use the same number of months given in item 7).
a. Student's personal funds $ ________
b. Funds from this school (specify type) $ ________
c. Funds from another source (specify type and source) $ ________
d. On-campus employment (if any) $ ________
Total $ ________

9. Remarks: ________

SAMPLE FORM I-20A-B

10. School Certification: I certify under penalty of perjury that all information provided above in items 1 through 8 was completed before I signed this form and is true and correct; I executed this form in the United States after review and evaluation in the United States by me or other officials of the school of the student's application, transcripts or other records of courses taken and proof of financial responsibility, which were received at the school prior to the execution of this form; the school has determined that the above named student's qualifications meet all standards for admission to the school; the student will be required to pursue a full course of study as defined by 8 CFR 214.2(f)(6); I am a designated official of the above named school and I am authorized to issue this form.

Signature of designated school official — Name of school official (print or type) — Title — Date issued — Place issued (city and state)

11. Student Certification: I have read and agreed to comply with the terms and conditions of my admission and those of any extension of stay as specified on page 2. I certify that all information provided on this form refers specifically to me and is true and correct to the best of my knowledge. I certify that I seek to enter or remain in the United States temporarily, and solely for the purpose of pursuing a full course of study at the school named on Page 1 of this form. I also authorize the named school to release any information from my records which is needed by the INS pursuant to 8 CFR 214.3(g) to determine my nonimmigrant status.

Signature of student — Name of student — Date

Signature of parent or guardian if student is under 18 — Name of parent/guardian (Print or type) — Address(city) — (State or province) — (Country) — (Date)

Form I-20 A-B/I-20ID (Rev 04-27-88)N

For official use only
Microfilm Index Number

I-20-ID (STUDENT) COPY

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IF YOU NEED MORE INFORMATION CONCERNING YOUR F-1 NONIMMIGRANT STUDENT STATUS AND THE RELATING IMMIGRATION PROCEDURES, PLEASE CONTACT EITHER YOUR FOREIGN STUDENT ADVISOR ON CAMPUS OR A NEARBY IMMIGRATION AND NATURALIZATION SERVICE OFFICE.

THIS PAGE, WHEN PROPERLY ENDORSED, MAY BE USED FOR ENTRY OF THE SPOUSE AND CHILDREN OF AN F-1 STUDENT FOLLOWING TO JOIN THE STUDENT IN THE UNITED STATES OR FOR REENTRY OF THE STUDENT TO ATTEND THE SAME SCHOOL AFTER A TEMPORARY ABSENCE FROM THE UNITED STATES.

For reentry of the student and/or the F-2 dependents (EACH CERTIFICATION SIGNATURE IS VALID FOR ONLY ONE YEAR.)

Signature of Designated School Official Name of School Official (print or type) Title Date

Signature of Designated School Official Name of School Official (print or type) Title Date

Signature of Designated School Official Name of School Official (print or type) Title Date

Signature of Designated School Official Name of School Official (print or type) Title Date

Signature of Designated School Official Name of School Official (print or type) Title Date

Signature of Designated School Official Name of School Official (print or type) Title Date

Dependent spouse and children of the F-1 student who are seeking entry/reentry to the U.S

Name family (caps) first	Date of birth	Country of birth	Relationship to the F-1 student

SAMPLE FORM I-20A-B

Student Employment Authorization and other Records

Page 1

U.S. Department of Justice
Immigration and Naturalization Service

Certificate of Eligibility for Nonimmigrant (M-1) Student Status - For Vocational Students *(OMB No. 1115-0051)*

This page must be completed and signed in the U.S. by a designated school official.

1.

Family name *(surname)*:	
First *(given)* **name** *(do not enter middle name)*:	
Country of birth:	**Date of birth (mo./day/year):**
Country of citizenship:	**Admission number** *(complete if known)*:

2.

School *(school district)* **name:**
School official *to be notified of student's arrival in U.S. (Name and Title)*:
School address *(include zip code)*:
School code *(include 3-digit suffix, if any)* **and approval date:** ________ 214F ________ Approved on ________

For Immigration Only Use

Visa issuing post	Date visa issued
Reinstated, extension granted to:	

I-20M-N (SCHOOL) COPY

3. This certificate is issued to the student named above for:
(check and fill out as appropriate)
a. ☐ Initial attendance at this school.
b. ☐ Continued attendance at this school.
c. ☐ School transfer.
Transferred from ________________ .
d. ☐ Use by dependents for entering the United States.
e. ☐ Other ________________

4. Level of education the student is pursuing or will pursue in the United States: *(Check only one)*
a. ☐ High school b. ☐ Other vocational school

5. The student named above has been accepted for a full course of study at this school, majoring in ____________ .
The student is expected to report to the school not later than (date) ________ and complete studies not later than (date) ________ the normal length of study is

6. ☐ English proficiency is required:
☐ The student has the required English proficiency.
☐ The student is not yet proficient, English instructions will be given at the school.
☐ English proficiency is not required because ____________

7. This school estimates the student's average costs for an academic term of ______ (up to 12) months to be:

a. Tuition and fees	$
b. Living expenses	$
c. Expenses of dependents	$
d. Other (specify):	$
Total	$

8. This school has information showing the following as the student's means of support, estimated for an academic term of months (Use the same number of months given in item 7).

a. Students personal funds	$
b. Funds from this school *(specify type)*:	$
c. Funds from another source *(specify type and source)*:	$
Total	$

9. Remarks: ________________

SAMPLE FORM I-20M-N

10. School Certification: I certify under penalty of perjury that all information provided above in items 1 through 8 was completed before I signed this form and is true and correct; I executed this form in the United States after review and evaluation in the United States by me or other officials of the school of the student's application, transcripts or other records of courses taken and proof of financial responsibility which were received at the school prior to the execution of this form; the school has determined that the above named student's qualifications meet all standards for admission to the school; the student will be required to pursue a full course of study as defined by 8 CFR 214.2(f)(6); I am a designated official of the above named school and I am authorized to issue this form.

Signature of designated school official:	**Name of designated school official & title** *(print or type)*	**Date and place issued** *(city and state)*

11. Student Certification: I have read and agreed to comply with the terms and conditions of my admission and those of any extension of stay as specified on page 2. I certify that all information provided on this form refers to me and is true and correct to the best of my knowledge. I certify that I seek to enter or remain in the United States temporarily, and solely for the purpose of pursuing a full course of study at the school named on item 2 of this form. I also authorized the named school to release any information from my records which is needed by the INS pursuant to 8 CFR 214.3(g).

Signature of student:	**Name of student** *(print or type)*	**Date**
Signature of parent or guardian *(if student is under 18)*:	**Name of parent or guardian** *(print or type)*:	**Date**

Address of parent or guardian: *(street)* *(city)* *(state or province)* *(county)*

Form I-20M-N/I-20ID Copy (Rev. 5-3-90)N

For official use only
Microfilm Index Number

BEST COPY AVAILABLE

INSTRUCTIONS TO STUDENTS

FORM I-20M-N/120ID COPY. The first time you enter the United States, you must present a Form I-20M-N/I-20ID Copy. It will be returned to you endorsed with admission number. You must have your Form I-20-ID Copy (pages 3 and 4 of Form I-20M-N) with you at all times. You must not surrender it when you leave the United States. Failure to have it with you when you apply to reenter the United States will delay your entry into the United States. (If you lose your Form I-20ID Copy, you must request a new one, on Form I-102, from the Immigration and Naturalization Service office having jurisdiction over the school you were last authorized to attend.

ADMISSION. You must give this Form (I-20 M-N) to the American consular officer at the time you apply for a visa (unless you are exempt from visa requirements), and to immigration officer with evidence of ability to support yourself while pursuing a full course of study when you arrive in the United States. If you are exempt from visa requirements, and you are applying for admission to the United States as an M-1 student, you must give the immigration officer this form and evidence of your ability to support yourself while pursuing a full course of study.

SCHOOL. If you are applying for entry to the United States for the first time after being issued an M-M-1 visa, you will not be admitted unless you plan to attend the school specified in that visa. If, before you enter the United States, you decide to attend another school, you will present an I-20M-N from the new school to an American consular officer to have that school specified in your visa.

EMPLOYMENT. You are not permitted to work except for practical training or to engage in business. You may apply for permission to work for practical training only after completing the educational program. Your alien spouse or child (M-2 classification) may not work in the United States.

PERIOD OF STAY. You are permitted to remain in the United States only while maintaining nonimmigrant student status. You must also maintain a valid passport. You may not stay longer than authorized on your Form I-20ID Copy unless you apply to the Immigration and Naturalization Service (on Form I-538 accompanied by my Form I-20ID Copy) for an extension, between 15 and 60 days before the date that your authorized stay expires. You may stay while the application is being processed and if it is approved, until the expiration of the extension.

SCHOOL TRANSFER. You will not be granted permission to transfer to another school within six months of the date you first become an M-1 student, unless you are unable to remain at the school to which you are first admitted due to circumstances beyond your control. If you want to transfer to another school, you must apply on Form I-538 accompanied by your Form I-20ID Copy. The application must be submitted to the Immigration and Naturalization Service office having jurisdiction over the school from which you wish to transfer. Sixty days after filing your application, you may attend the new school subject to approval or denial of your application. Your application will be denied, however, if you have not been taking a full course of study at the school you were last authorized to attend.

EDUCATIONAL OBJECTIVE. You are not permitted to change your educational objective.

REENTRY. If you want to reenter the United States as a nonimmigrant student after a temporary absence, you must be in possession of the following (1) a valid student visa, (2) a valid passport and either a new Form I-20 M-N or your I-20ID Copy (pages 3 & 4 of the Form I-20 M-N) properly endorsed for reentry if the information on the I-20 ID Copy form is current.

NOTICE OF ADDRESS. If you move, you must submit a notice within 10 days of your change of address to the Immigration and Naturalization Service on Form AR-11 (available at any INS office).

ARRIVAL/DEPARTURE. When you depart from the United States, you must give your "Arrival Departure Record" (Form I-94) to a representative of the steamship or airline if you leave via a seaport or airport, to a Canadian immigration officer if you leave across the Canadian border, or to a United States immigration officer if you leave across the Mexican border. However, you may keep your I-94 for reentering United States from Mexico or Canada, if you return to the U.S. within 30 days.

PENALTY. If you do not register at the school named in your Form I-20M-N or If you stop attending school, or take less than a full course of study, or accept unauthorized employment, you fail to maintain your status and may be deported from the United States

INSTRUCTIONS TO THE SCHOOL

Failure to comply the law provides severe criminal penalties for you and your school for failure to comply with the regulatons and instructions governing issuance of this form. Failure to comply with 8CFR 214.3(K) may subject you and your school to criminal prosecution. If you issue this form improperly, provide false information, or fail to submit required reports, the Immigration and Naturalization Service may withdraw its approval of your school for attendance by nonimmigrant students

It Is Your Responsibility:

A To complete Page 1 for any alien you have accepted for a full course of study in your school, if that person
  (1) Intends to apply for admission to the United States as a nonimmigrant under Section 101(a)(15)(M)(i) of the Immigration and Nationality Act (M-1 classification);
  (2) Is in the United States as a M-1 nonimmigrant and has applied for transfer to your school; or
  (3) Is in the United States and will apply to change his/her nonimmigrant classification to M-1.

B To endorse Page 4 of this form for any alien you have accepted for a full course of study in your school if that person
  (1) Is in the United States in M-1 classification and is departing temporarily from the United States, and there has been no change in the information in items 3, 4, 7, and/or 8 on Page 1. If there has been a change in items 3, 4, 7, and/or 8 on Page 1, a new Form I-20M-N/I-20 ID Copy must be issued for reentry after a temporary absence.
  (2) Has a spouse or children who wish to join the student in the United States and acquire nonimmigrant (M-2) classification, and there has been no change in the information in items 7 and/or 8 on Page 1. If there has been a change in items 7 and/or 8 on Page 1, a new Form I-20 M-N/I-20 ID Copy must be issued

C. To establish that any student to whom you issue this form
  (1) Is able to pay all expenses incurred (and those of any dependents with the student) while in the United States
  (2) Meets all requirements for admission to your school If you want assistance in determining the student's proficiency in English, contact the Cultural Affairs Officer at the Embassy of the student's country.

D. To be sure each Form I-20M-N/I-20 ID Copy is signed and issued in the United States by a designated school official of your school as defined in 8CFR 214.3(i)(1). A designated school official who may be authorized by the school to issue this form must be a regularly employed member of the school administration, whose office is located at the school and whose compensation does not come from commissions for recruitment of foreign students. Individuals whose principal obligation to the school is to recruit foreign students for compensation may not be authorized to issue this form.

E. To endorse Page 4 of this form at least every six months when the student leaves the United States for a temporary absence, if the student will be enrolled in your school immediately after reentry.

F To retain all evidence which shows the scholastic ability and financial status on which admission was based, as long as the student is attending your school.

G. To comply with request from the Immigration and Naturalization Service for information concerning the student's immigration status.

SAMPLE FORM

U.S. Department of Justice
Immigration and Naturalization Service

Certificate of Eligibility for Nonimmigrant (M-1) Student Status - For Vocational Students *(OMB No. 1115-0051)*

This page must be completed and signed in the U.S. by a designated school official.

I-20M-N (STUDENT) COPY

SAMPLE FORM I-20M-N

1.

Family name *(surname)*:	
First *(given)* **name** *(do not enter middle name)*:	
Country of birth:	**Date of birth (mo./day/year):**
Country of citizenship:	**Admission number** *(complete if known)*:

2.

School *(school district)* **name:**

School official *to be notified of student's arrival in U.S. (Name and Title)*:

School address *(include zip code)*:

School code *(include 3-digit suffix, if any)* **and approval date:**

________ 214F ________ Approved on ____________

For Immigration Only Use

Visa issuing post	Date visa issued
Reinstated, extension granted to:	

3. This certificate is issued to the student named above for: *(check and fill out as appropriate)*
   - a. ☐ Initial attendance at this school.
   - b. ☐ Continued attendance at this school.
   - c. ☐ School transfer.
     Transferred from ______________________.
   - d. ☐ Use by dependents for entering the United States.
   - e. ☐ Other ______________________.

4. Level of education the student is pursuing or will pursue in the United States: *(Check only one)*
   a. ☐ High school b. ☐ Other vocational school

5. The student named above has been accepted for a full course of study at this school, majoring in ______________.
   The student is expected to report to the school not later than (date) ____________ and complete studies not later than (date) ____________ the normal length of study is

6. ☐ English proficiency is required:
   - ☐ The student has the required English proficiency.
   - ☐ The student is not yet proficient, English instructions will be given at the school.
   - ☐ English proficiency is not required because ____________
     ____

7. This school estimates the student's average costs for an academic term of ______ (up to 12) months to be:

a. Tuition and fees	$ ____________
b. Living expenses	$ ____________
c. Expenses of dependents	$ ____________
d. Other (specify):	$ ____________
Total	$ ____________

8. This school has information showing the following as the student's means of support, estimated for an academic term of months (Use the same number of months given in item 7).

a. Students personal funds	$ ____________
b. Funds from this school *(specify type)*	$ ____________
c. Funds from another source *(specify type and source)*	$ ____________
Total	$ ____________

9. Remarks: ______________________________

10. School Certification: I certify under penalty of perjury that all information provided above in items 1 through 8 was completed before I signed this form and is true and correct; I executed this form in the United States after review and evaluation in the United States by me or other officials of the school of the student's application, transcripts or other records of courses taken and proof of financial responsibility which were received at the school prior to the execution of this form; the school has determined that the above named student's qualifications meet all standards for admission to the school; the student will be required to pursue a full course of study as defined by 8 CFR 214.2(f)(6). I am a designated official of the above named school and I am authorized to issue this form.

Signature of designated school official:	**Name of designated school official & title** *(print or type)*	**Date and place issued** *(city and state)*

11. Student Certification: I have read and agreed to comply with the terms and conditions of my admission and those of any extension of stay as specified on page 2. I certify that all information provided on this form refers to me and is true and correct to the best of my knowledge. I certify that I seek to enter or remain in the United States temporarily, and solely for the purpose of pursuing a full course of study at the school named on item 2 of this form. I also authorized the named school to release any information from my records which is needed by the INS pursuant to 8 CFR 214.3(g).

Signature of student:	**Name of student** *(print or type)*	**Date**
Signature of parent or guardian *(if student is under 18)*	**Name of parent or guardian** *(print or type)*	**Date**

Address of parent or guardian: *(street)* *(city)* *(state or province)* *(county)*

Form I-20M-N/I-20ID Copy (Rev. 5-3-90)N

For official use only
Microfilm Index Number

IF YOU NEED MORE INFORMATION CONCERNING YOUR M-1 NONIMMIGRANT STUDENT STATUS AND THE RELATING IMMIGRATION PROCEDURES, PLEASE CONTACT EITHER YOUR FOREIGN STUDENT ADVISOR ON CAMPUS OR A NEARBY IMMIGRATION AND NATURALIZATION SERVICE OFFICE.

This page, when properly endorsed, may be used for entry of the spouse and children of an M-1 Student following to join the student in the United States, or reentry of the student to attend the same school after a temporary absence from the United States.

For reentry of the student and/or the M2 dependents *(Each Certification Signature is valid for six months.)*

Signature of Designated School Official — Name School Official & Title *(Print or Type)* — Date

Signature of Designated School Official — Name School Official & Title *(Print or Type)* — Date

Signature of Designated School Official — Name School Official & Title *(Print or Type)* — Date

Signature of Designated School Official — Name School Official & Title *(Print or Type)* — Date

Signature of Designated School Official — Name School Official & Title *(Print or Type)* — Date

Signature of Designated School Official — Name School Official & Title *(Print or Type)* — Date

SAMPLE FORM I-20M-N

Dependent spouse and children of the M-1 student who are seeking entry/reentry to the U.S.

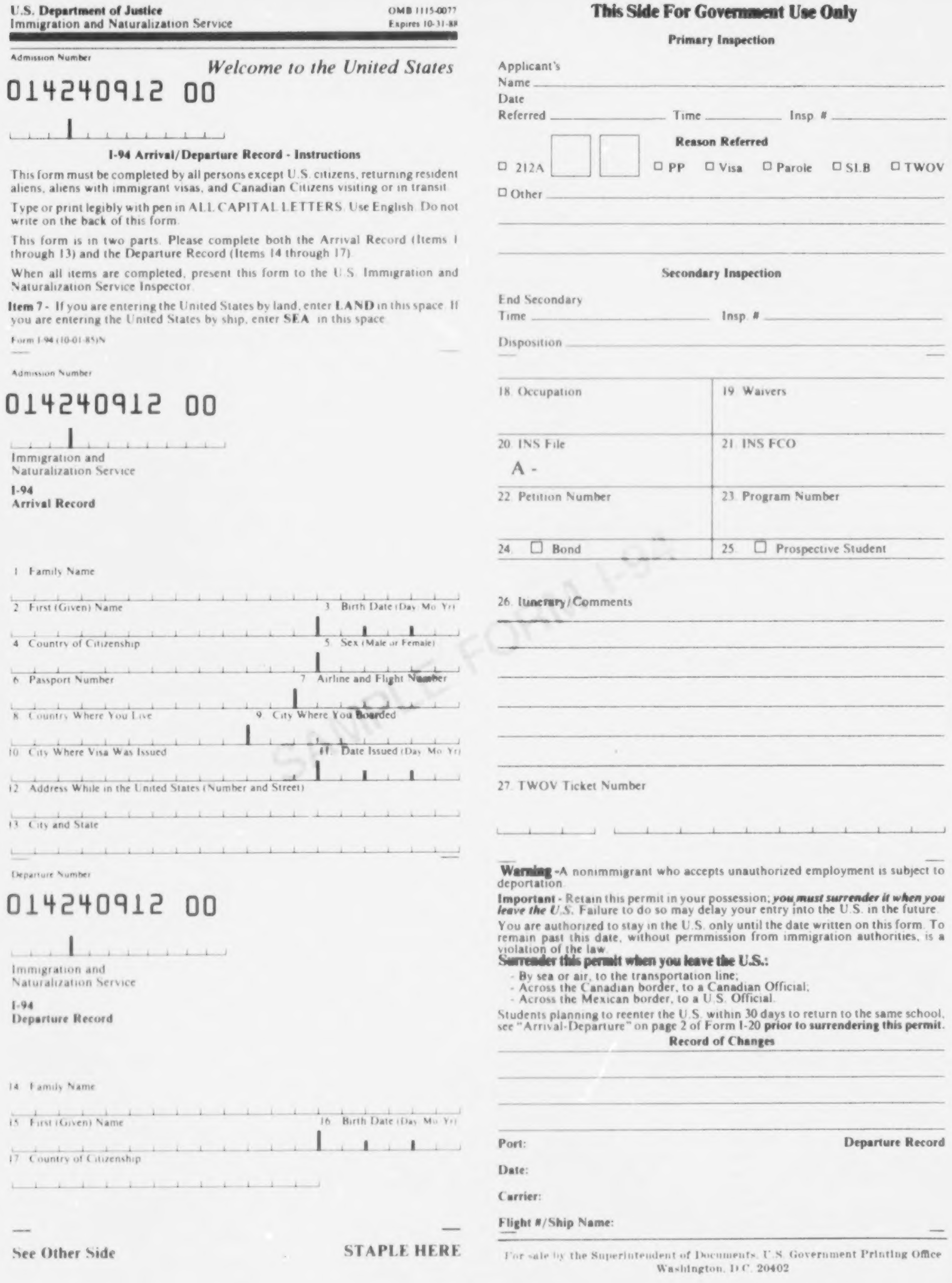
Name Family *(Caps)* First:	Date of Birth:	Country of birth:	Relationship to the M-1 Student:

Other Student Records:

Authority for collecting: Authority for collecting the information on this and related student forms is contained in 8U.S.C. 1101 and 1184. The information solicited will be used by the Department of State and the Immigration and Naturalization Service to determine eligibility for the benefits requested. The law provides severe penalties for knowingly and willfully falsifying or concealing a material fact, or using any false document in the submission of this form.

Reporting Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimated or any other aspect of this collection of information, including suggestions for reducing this burden, to: U. S. Department of Justice, Immigration and Naturalization Service (Room 2011), Washington, D.C. 20536; and to the Office of Management and Budget, Paperwork Reduction Project, OMB No.1115-0051, Washington, D.C. 20503.

BEST COPY AVAILABLE



U.S. Department of Justice
Immigration and Naturalization Service

OMB 1115-0077
Expires 10-31-88

Admission Number

Welcome to the United States

014240912 00

I-94 Arrival/Departure Record - Instructions

This form must be completed by all persons except U.S. citizens, returning resident aliens, aliens with immigrant visas, and Canadian Citizens visiting or in transit.

Type or print legibly with pen in ALL CAPITAL LETTERS. Use English. Do not write on the back of this form.

This form is in two parts. Please complete both the Arrival Record (Items 1 through 13) and the Departure Record (Items 14 through 17).

When all items are completed, present this form to the U.S. Immigration and Naturalization Service Inspector.

Item 7 - If you are entering the United States by land, enter **LAND** in this space. If you are entering the United States by ship, enter **SEA** in this space.

Form I-94 (10-01-85)N

Admission Number

014240912 00

Immigration and
Naturalization Service

I-94
Arrival Record

1. Family Name
2. First (Given) Name
3. Birth Date (Day Mo Yr)
4. Country of Citizenship
5. Sex (Male or Female)
6. Passport Number
7. Airline and Flight Number
8. Country Where You Live
9. City Where You Boarded
10. City Where Visa Was Issued
11. Date Issued (Day Mo Yr)
12. Address While in the United States (Number and Street)
13. City and State

Departure Number

014240912 00

Immigration and
Naturalization Service

I-94
Departure Record

14. Family Name
15. First (Given) Name
16. Birth Date (Day Mo Yr)
17. Country of Citizenship

See Other Side

STAPLE HERE

This Side For Government Use Only

Primary Inspection

Applicant's Name ____________________

Date Referred __________ Time __________ Insp. # __________

Reason Referred

☐ 212A ☐ PP ☐ Visa ☐ Parole ☐ SLB ☐ TWOV

☐ Other ____________________

Secondary Inspection

End Secondary Time __________ Insp. # __________

Disposition ____________________

18. Occupation	19. Waivers
20. INS File A -	21. INS FCO
22. Petition Number	23. Program Number
24. ☐ Bond	25. ☐ Prospective Student

26. Itinerary/Comments

27. TWOV Ticket Number

Warning - A nonimmigrant who accepts unauthorized employment is subject to deportation.

Important - Retain this permit in your possession; ***you must surrender it when you leave the U.S.*** Failure to do so may delay your entry into the U.S. in the future.

You are authorized to stay in the U.S. only until the date written on this form. To remain past this date, without permmission from immigration authorities, is a violation of the law.

Surrender this permit when you leave the U.S.:

- By sea or air, to the transportation line;
- Across the Canadian border, to a Canadian Official;
- Across the Mexican border, to a U.S. Official.

Students planning to reenter the U.S. within 30 days to return to the same school, see "Arrival-Departure" on page 2 of Form I-20 **prior to surrendering this permit.**

Record of Changes

Port:

Departure Record

Date:

Carrier:

Flight #/Ship Name:

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

SAMPLE FORM I-94

U.S. Department of Justice

Immigration and Naturalization Service

OMB No. 1115-0079
Approval Expires 7-85

APPLICATION BY NONIMMIGRANT ALIEN FOR REPLACEMENT OF ARRIVAL DOCUMENT

(READ INSTRUCTIONS ON REVERSE)

Fee Stamp

1. I hereby apply for: Check the appropriate box(es) below to indicate the purpose of your application.)

A ☐ REPLACEMENT OF LOST, MUTILATED, OR DESTROYED ARRIVAL-DEPARTURE RECORD (FORM I-94)
B ☐ REPLACEMENT OF LOST, MUTILATED, OR DESTROYED CREWMAN'S LANDING PERMIT (FORM I-95)
C ☐ REPLACEMENT OF LOST, MUTILATED, OR DESTROYED FORM I-20 ID COPY RELATING TO STUDENT
D ☐ REPLACEMENT OF INCORRECT ARRIVAL-DEPARTURE RECORD (FORM I-94), CREWMAN'S LANDING PERMIT (FORM I-95), AND/OR FORM I-20 ID COPY

2. YOUR NAME — FAMILY NAME (Capital Letters) FIRST MIDDLE
3. MAILING ADDRESS IN U. S. — Number and Street (Apt. No.)
City State ZIP Code
4. Admission Number, if known
5. Country of Citizenship
6. Passport or Alien Registration Number (if Any)
7. Means of Last Arrival in the U. S. (Name of Vessel, or Airline & Flight No., etc.)
8. Place (City) where transportation was boarded
9. Address Outside the United States (Number) (Street) (City) (Province or State) (Country)
10. Date of Birth (Month) (Day) (Year)
11. Country of Birth
12. Place Visa Issued (City) (Country)
13. Date Visa Issued (Month) (Day) (Year)
14. Last Admitted to U.S. at (City) (State)
15. Date Last Admitted to U.S. (Month) (Day) (Year)
16. Name Used when Last Admitted to the U. S. (If same as item "2", write "Same")
17. Status at Time of Admission ☐ Student ☐ Crewman ☐ Other (Specify)
18. Date to Which Stay Has Been Authorized (Month) (Day) (Year)

SAMPLE FORM I-102

FILL IN THIS BLOCK IF YOU CHECKED BOX "A", "B", OR "C" OF ITEM 1 ABOVE

19. My Arrival-Departure Record, or Crewman's Landing Permit, and/or Form I-20 ID Copy became ☐ lost ☐ mutilated ☐ destroyed
on or about ____________ *(Date)* at ____________ *(Place)* under the following circumstances ____________

If my document is recovered or I ascertain its whereabouts, I will surrender it or report the facts to the Immigration and Naturalization Service.

SIGNATURE OF PERSON PREPARING FORM, IF OTHER THAN APPLICANT

20. I declare that this document was prepared by me at the request of the applicant and is based on all information of which I have any knowledge.

Signature:

Address

Date

SIGNATURE OF APPLICANT

21. I certify that the above statements are true and correct to best of my knowledge and belief.

Complete signature of applicant:

Date signed:

FOR OFFICIAL USE ONLY

MICROFILM INDEX NUMBER

RECEIVED	TRANS. IN	RET'D-TRANS. OUT	COMPLETED

Form I-102 (Rev. 5-5-83)N

130

BEST COPY AVAILABLE

APPLICANT: DO NOT WRITE BELOW THIS LINE

Requesting Office

Date

(By Searching Office)

☐ Record located; copy attached

☐ Unable to verify

☐ Record located in NIIS data base or student subsystem of NIIS data base.

I recommend that application be ☐ Granted ☐ Denied

(Immigration Officer)

(Date)

Remarks:

Date Replacement Issued

DATE OF ACTION

DD

DISTRICT

For official use only

MICROFILM INDEX NUMBER

INSTRUCTIONS

SAMPLE FORM I-102

1. HOW TO PREPARE - Fill in, in single copy only, by typewriter, or print in block letters in ink.

2. WHERE TO SUBMIT THIS APPLICATION - You may mail this application or submit it in person to the Immigration office having jurisdiction over the place where you are residing in the United States.

3. MUTILATED OR INACCURATE DOCUMENTS - If you have a mutilated or inaccurate document in your possession, it must be attached to this application. If you checked Box "D" of item 1, there must be attached to this application a statement dated and signed by you citing specifically the information on your Form I-94, I-95, or Form I-20 ID Copy that requires correction and the reason why this information is incorrect.

4. FEE - If you checked box "A", "B", or "C" of item 1, a fee of fifteen dollars ($15) must be paid for filing this application. It cannot be refunded regardless of the action taken on the application. DO NOT MAIL CASH. Payment by check or money order must be drawn on a bank or other institution located in the United States and be payable in United States currency. If applicant resides in the Virgin Islands, check or money order must be payable to the "Commissioner of Finance of the Virgin Islands". If applicant resides in Guam, check or money order must be payable to the "Treasurer, Guam". All other applicants must make the check or money order payable to the "Immigration and Naturalization Service". When check is drawn on an account of a person other than the applicant, the name of the applicant must be entered on the face of the check. Personal checks are accepted subject to collectibility. An uncollectible check will render the application and any documents issued pursuant to it invalid. A charge of $5.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn.

5. PENALTIES - Severe penalties are provided by law for knowingly and willfully falsifying or concealing a material fact or using any false document in the submission of this application. Also, a false representation may result in the denial of this application and any other application you may make for any benefit under the immigration laws of the United States.

U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-0168
Petition for a Nonimmigrant Worker

START HERE - Please Type or Print

Part 1. Information about the employer filing this petition.

If the employer is an individual, use the top name line. Organizations should use the second line.

Family Name	Given Name	Middle Initial
Company or Organization Name		

Address - Attn:

Street Number and Name		Apt. #
City	State or Province	
Country		ZIP/Postal Code

IRS Tax #

Part 2. Information about this Petition.

(See instructions to determine the fee)

1. **Requested Nonimmigrant Classification:** (write classification symbol at right)
2. **Basis for Classification** (check one)
   - a. ☐ New employment
   - b. ☐ Continuation of previously approved employment without change
   - c. ☐ Change in previously approved employment
   - d. ☐ New concurrent employment
3. **Prior petition.** If you checked other than "New Employment" in item 2. (above) give the most recent prior petition number for the worker(s):
4. **Requested Action:** (check one)
   - a. ☐ Notify the office in Part 4 so the person(s) can obtain a visa or be admitted (NOTE: a petition is not required for an E-1, E-2, or R visa).
   - b. ☐ Change the person(s) status and extend their stay since they are all now in the U.S. in another status (see instructions for limitations). This is available only where you check "New Employment" in item 2, above.
   - c. ☐ Extend or amend the stay of the person(s) since they now hold this status.
5. **Total number of workers in petition:**

(See instructions for where more than one worker can be included.)

Part 3. Information about the person(s) you are filing for.

Complete the blocks below. Use the continuation sheet to name each person included in this petition.

If an entertainment group, give their group name.

Family Name	Given Name	Middle Initial
Date of Birth *(Month/Day/Year)*	Country of Birth	
Social Security #	A #	

If in the United States, complete the following:

Date of Arrival *(Month/Day/Year)*	I-94 #
Current Nonimmigrant Status	Expires *(Month/Day/Year)*

Form I-129 (Rev. 12/20/91) DRAFT 10

Continued on back.

FOR INS USE ONLY

Returned	Receipt
Resubmitted	
Reloc Sent	
Reloc Rec'd	
Interviewed ☐ Petitioner ☐ Beneficiary	

Class:
# of Workers:
Priority Number:
Validity Dates: From
To

☐ **Classification Approved**
☐ Consulate/POE/PFI Notified
At:
☐ Extension Granted
☐ COS/Extension Granted

Partial Approval (explain)

Action Block

To Be Completed by *Attorney or Representative*, if any

☐ Fill in box if G-28 is attached to represent the applicant

VOLAG#

ATTY State License #

SAMPLE FORM I-129

Part 4. Processing Information.

a. If the person named in Part 3 is outside the U.S. or a requested extension of stay or change of status cannot be granted, give the U.S. consulat inspection facility you want notified if this petition is approved.

Type of Office (check one): ☐ Consulate ☐ Pre-flight inspection ☐ Port of Entry

Office Address (City) U.S. State or Foreign Country

Person's Foreign Address

b. Does each person in this petition have a valid passport?
☐ Not required to have passport ☐ No - explain on separate paper ☐ Yes

c. Are you filing any other petitions with this one? ☐ No ☐ Yes - How many? ______

d. Are applications for replacement/Initial I-94's being filed with this petition? ☐ No ☐ Yes - How many? ______

e. Are applications by dependents being filed with this petition? ☐ No ☐ Yes - How many? ______

f. Is any person in this petition in exclusion or deportation proceedings? ☐ No ☐ Yes - explain on separate paper

g. Have you ever filed an immigrant petition for any person in this petition? ☐ No ☐ Yes - explain on separate paper

h. If you indicated you were filing a new petition in Part 2, within the past 7 years has any person in this petition:
1) ever been given the classification you are now requesting? ☐ No ☐ Yes - explain on separate paper
2) ever been denied the classification you are now requesting? ☐ No ☐ Yes - explain on separate paper

i. If you are filing for an entertainment group, has any person in this petition not been with the group for at least 1 year?
☐ No ☐ Yes - explain on separate paper

Part 5. Basic Information about the proposed employment and employer.

Attach the supplement relating to the classification you are requesting.

SAMPLE FORM I-129

Job Title

Nontechnical Description of Job

Address where the person(s) will work if different from the address in Part 1.

Is this a full-time position? ☐ No - Hours per week ☐ Yes

Wages per week or per year

Other Compensation (Explain)

Value per week or per year

Dates of intended employment From: To:

Type of Petitioner - check one: ☐ U.S. citizen or permanent resident ☐ Organization ☐ Other - explain on separate paper

Type of business:

Year established:

Current Number of Employees

Gross Annual Income

Net Annual Income

Part 6. Signature.

Read the information on penalties in the instructions before completing this section.

I certify, under penalty of perjury under the laws of the United States of America, that this petition, and the evidence submitted with it, is all true and correct. If filing this on behalf of an organization, I certify that I am empowered to do so by that organization. If this petition is to extend a prior petition, I certify that the proposed employment is under the same terms and conditions as in the prior approved petition. I authorize the release of any information from my records, or from the petitioning organization's records, which the Immigration and Naturalization Service needs to determine eligibility for the benefit being sought.

Signature and title	Print Name	Date

Please Note: If you do not completely fill out this form and the required supplement, or fail to submit required documents listed in the instructions, then the person(s) filed for may not be found eligible for the requested benefit, and this petition may be denied.

Part 7. Signature of person preparing form if other than above.

I declare that I prepared this petition at the request of the above person and it is based on all information of which I have any knowledge.

Signature	Print Name	Date

Firm Name and Address

U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-0168
E Classification
Supplement to Form I-129

Name of person or organization filing petition:

Name of person you are filing for:

Classification sought (check one):
☐ E-1 Treaty trader ☐ E-2 Treaty investor

Name of country signatory to treaty with U.S.

Section 1. Information about the Employer Outside the U.S. (if any)

Name

Address

Alien's Position - Title, duties and number of years employed

Principal Product, merchandise or service

Total Number of Employees

Section 2. Additional Information about the U.S. Employer.

The U.S. company is, to the company outside the U.S. (check one):
☐ Parent ☐ Branch ☐ Subsidiary ☐ Affiliate ☐ Joint Venture

Date and Place of Incorporation or establishment in the U.S.

Nationality of Ownership (Individual or Corporate)

Name	Nationality	Immigration Status	% Ownership

Assets

Net Worth

Total Annual Income

Staff in the U.S.	Executive/Manager	Specialized Qualifications or Knowledge
Nationals of Treaty Country in E or L Status		
Total number of employees in the U.S.		

Total number of employees the alien would supervise; or describe the nature of the specialized skills essential to the U.S. company.

Section 3. Complete if filing for an E-1 Treaty Trader

Total Annual Gross Trade/Business of the U.S. company
$

For Year Ending

Percent of total gross trade which is between the U.S. and the country of which the treaty trader organization is a national.

Section 4. Complete if filing for an E-2 Treaty Investor

Total Investment:	Cash	Equipment	Other
	$	$	$
	Inventory	Premises	Total
	$	$	$

Form I-129 Supplement E/L (12/20/91) DRAFT 8 .

U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-0168
H Classification
Supplement to Form I-129

Name of person or organization filing petition:

Name of person or total number of workers or trainees you are filing for:

List the alien's and any dependent family members; prior periods of stay in H classification in the U.S. for the last six years. Be sure to list only those periods in which the alien and/or family members were actually in the U.S. in an H classification. If more space is needed, attach an additional sheet.

Classification sought (check one):

- ☐ H-1A Registered Professional nurse
- ☐ H-1B1 Specialty occupation
- ☐ H-1B2 Exceptional services relating to a cooperative research and development project administered by the U.S. Department of Defense
- ☐ H-1B3 Artist, entertainer or fashion model of national or international acclaim
- ☐ H-1B4 Artist or entertainer in unique or traditional art form
- ☐ H-1B5 Athlete
- ☐ H-1BS Essential Support Personnel for H-1B entertainer or athlete
- ☐ H-2A Agricultural worker
- ☐ H-2B Nonagricultural worker
- ☐ H-3 Trainee
- ☐ H-3 Special education exchange visitor program

Section 1. Complete this section if filing for H-1A or H-1B classification.

Describe the proposed duties

SAMPLE FORM I-129

Alien's present occupation and summary of prior work experience

Statement for H-1B speciality occupations only:

By filing this petition, I agree to the terms of the labor condition application for the duration of the alien's authorized period of stay for H-1B employment.

Petitioner's Signature Date

Statement for H-1B specialty occupations and DOD projects:

As an authorized official of the employer, I certify that the employer will be liable for the reasonable costs of return transportation of the alien abroad if the alien is dismissed from employment by the employer before the end of the period of authorized stay.

Signature of authorized official of employer Date

Statement for H-1B DOD projects only:

I certify that the alien will be working on a cooperative research and development project or a coproduction project under a reciprocal Government-to-Government agreement administered by the Department of Defense.

DOD project manager's signature Date

Section 2. Complete this section if filing for H-2A or H-2B classification.

Employment is: (check one)
- ☐ Seasonal
- ☐ Peakload
- ☐ Intermittent
- ☐ One-time occurrence

Temporary need is: (check one)
- ☐ Unpredictable
- ☐ Periodic
- ☐ Recurrent annually

Explain your temporary need for the alien's services (attach a separate paper if additional space is needed).

Form I-129 Supplement H (12/20/91) DRAFT 9

Continued on back.

Section 3. Complete this section if filing for H-2A classification.

The petitioner and each employer consent to allow government access to the site where the labor is being performed for the purpose of determining compliance with H-2A requirements. The petitioner further agrees to notify the Service in the manner and within the time frame specified if an H-2A worker absconds or if the authorized employment ends more than five days before the relating certification document expires, and pay liquidated damages of ten dollars for each instance where it cannot demonstrate compliance with this notification requirement. The petitioner also agrees to pay liquidated damages of two hundred dollars for each instance where it cannot be demonstrated that the H-2A worker either departed the United States or obtained authorized status during the period of admission or within five days of early termination, whichever comes first.

The petitioner must execute Part A. If the petitioner is the employer's agent, the employer must execute Part B. If there are joint employers, they must each execute Part C.

Part A. Petitioner:

By filing this petition, I agree to the conditions of H-2A employment, and agree to the notice requirements and limited liabilities defined in 8 CFR 214.2 (h) (3) (vi).

Petitioner's signature Date

Part B. Employer who is not petitioner:

I certify that I have authorized the party filing this petition to act as my agent in this regard. I assume full responsibility for all representations made by this agent on my behalf, and agree to the conditions of H-2A eligibility.

Employer's signature Date

Part C. Joint Employers:

SAMPLE FORM I-129

I agree to the conditions of H-2A eligibility.

Joint employer's signature(s) Date

Joint employer's signature(s) Date

Joint employer's signature(s) Date

Joint employer's signature(s) Date

Joint employer's signature(s) Date

Section 4. Complete this section if filing for H-3 classification.

If you answer "yes" to any of the following questions, attach a full explanation.

a. Is the training you intend to provide, or similar training, available in the alien's country? ☐ No ☐ Yes

b. Will the training benefit the alien in pursuing a career abroad? ☐ No ☐ Yes

c. Does the training involve productive employment incidental to training? ☐ No ☐ Yes

d. Does the alien already have skills related to the training? ☐ No ☐ Yes

e. Is this training an effort to overcome a labor shortage? ☐ No ☐ Yes

f. Do you intend to employ the alien abroad at the end of this training? ☐ No ☐ Yes

If you do not intend to employ this person abroad at the end of this training, explain why you wish to incur the cost of providing this training, and your expected return from this training.

U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-0168
L Classification
Supplement to Form I-129

Name of person or organization filing petition:	Name of person you are filing for:
This petition is (check one): ☐ An individual petition	☐ A blanket petition

Section 1. Complete this section if filing an individual petition.

Classification sought (check one): ☐ L-1A manager or executive ☐ L-1B specialized knowledge

List the alien's, and any dependent family members' prior periods of stay in an L classification in the U.S. for the last seven years. Be sure to list only those periods in which the alien and/or family members were actually in the U.S. in an L classification.

Name and address of employer abroad

Dates of alien's employment with this employer. Explain any interruptions in employment.

Description of the alien's duties for the past 3 years.

Description of alien's proposed duties in the U.S.

Summarize the alien's education and work experience.

SAMPLE FORM I-129

The U.S. company is, to the company abroad: (check one)
☐ Parent ☐ Branch ☐ Subsidiary ☐ Affiliate ☐ Joint Venture

Describe the stock ownership and managerial control of each company.

Do the companies currently have the same qualifying relationship as they did during the one-year period of the alien's employment with the company abroad? ☐ Yes ☐ No (attach explanation)

Is the alien coming to the U.S. to open a new office?
☐ Yes (explain in detail on separate paper) ☐ No

Section 2. Complete this section if filing a Blanket Petition.

List all U.S. and foreign parent, branches, subsidiaries and affiliates included in this petition. (Attach a separate paper if additional space is needed.)

Name and Address	Relationship

Explain in detail on separate paper.

Form I-129 Supplement E/L (12/18/91) DRAFT 6

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OMB#1115-0168

U.S. Department of Justice
Immigration and Naturalization Service

O and P Classifications
Supplement to Form I-129

Name of person or organization filing petition:

Name of person or group or total number of workers you are filing for:

Classification sought (check one):

- ☐ O-1 Alien of extraordinary ability in sciences, art, education, or business.
- ☐ P-2 Artist or entertainer for reciprocal exchange program
- ☐ P-2S Essential Support Personnel for P-2

Explain the nature of the event

Describe the duties to be performed

SAMPLE FORM I-129

If filing for O-2 or P support alien, dates of the alien's prior experience with the O-1 or P alien.

Have you obtained the required written consultations(s)? ☐ Yes - attached ☐ No - Copy of request attached

If not, give the following information about the organizations(s) to which you have sent a duplicate of this petition.

O-1 Extraordinary ability

Name of recognized peer group Phone #

Address Date sent

O-1 Extraordinary achievement in motion pictures or television

Name of labor organization Phone #

Address Date sent

Name of management organization Phone #

Address Date sent

O-2 or P alien

Name of labor organization Phone #

Address Date sent

Form I-129 Supplement O/P/Q/R (12/20/91) DRAFT 10

OMB #1115-0168

U.S. Department of Justice
Immigration and Naturalization Service

Q & R Classifications
Supplement to Form I-129

Name of person or organization filing petition:

Name of person you are filing for:

Section 1. Complete this section if you are filing for a Q international cultural exchange alien.

I hereby certify that the participant(s) in this international cultural exchange program:

- is at least 18 years of age,
- has the ability to communicate effectively about the cultural attributes of his or her country of nationality to the American public, and
- has not previously been in the United States as a Q nonimmigrant unless he/she has resided and been physically present outside the U.S. for the immediate prior year.

I also certify that the same wages and working conditions are accorded the participants as are provided to similarly employed U.S. workers.

Petitioner's signature

Date

Section 2. Complete this section if you are filing for an R religious worker.

List the alien's, and any dependent family members, prior periods of stay in R classification in the U.S. for the last six years. Be sure to list only those periods in which the alien and/or family members were actually in the U.S. in an R classification.

SAMPLE FORM I-129

Describe the alien's proposed duties in the U.S.

Describe the alien's qualifications for the vocation or occupation

Description of the relationship between the U.S. religious organization and the organization abroad of which the alien was a member.

Form I-129 Supplement O/P/Q/R (12/20/91) DRAFT 8

U.S. Department of Justice (INS)

Petition for Alien Relative

OMB No. 1115-0054

DO NOT WRITE IN THIS BLOCK — FOR EXAMINING OFFICE ONLY

Case ID#	Action Stamp	Fee Stamp
A#		
G-28 or Volag #		
Section of Law: ☐ 201 (b) spouse ☐ 203 (a)(1) ☐ 201 (b) child ☐ 203 (a)(2) ☐ 201 (b) parent ☐ 203 (a)(4) ☐ 203 (a)(5) AM CON: ______		Petition was filed on ______________ (priority date) ☐ Personal Interview ☐ Previously Forwarded ☐ Pet. ☐ Ben. "A" File Reviewed ☐ Stateside Criteria ☐ Field Investigations ☐ I-485 Simultaneously ☐ 204 (a)(2)(A) Resolved ☐ 204 (h) Resolved

REMARKS:

A. Relationship

1. The alien relative is my:
☐ Husband/Wife ☐ Parent ☐ Brother/Sister ☐ Child

2. Are you related by adoption?
☐ Yes ☐ No

3. Did you gain permanent residence through adoption?
☐ Yes ☐ No

B. Information about you

1. Name (Family name in CAPS) (First) (Middle)

2. Address (Number and Street) (Apartment Number)

(Town or City) (State/Country) (ZIP/Postal Code)

3. Place of Birth (Town or City) (State/Country)

4. Date of Birth (Mo/Day/Year)

5. Sex ☐ Male ☐ Female

6. Marital Status ☐ Married ☐ Single ☐ Widowed ☐ Divorced

7. Other Names Used (including maiden name)

8. Date and Place of Present Marriage (if married)

9. Social Security number

10. Alien Registration Number (if any)

11. Names of Prior Husbands/Wives

12. Date(s) Marriage(s) Ended

13. If you are a U.S. citizen, complete the following:
My citizenship was acquired through (check one)
☐ Birth in the U.S.
☐ Naturalization
Give number of certificate, date and place it was issued
☐ Parents
Have you obtained a certificate of citizenship in your own name?
☐ Yes ☐ No
If "Yes," give number of certificate, date and place it was issued

14a. If you are a lawful permanent resident alien, complete the following:
Date and place of admission for, or adjustment to, lawful permanent residence, and class of admission:

14b. Did you gain permanent resident status through marriage to a United States citizen or lawful permanent resident? ☐ Yes ☐ No

C. Information about your alien relative

1. Name (Family name in CAPS) (First) (Middle)

2. Address (Number and Street) (Apartment Number)

(Town or City) (State/Country) (ZIP/Postal Code)

3. Place of Birth (Town or City) (State/Country)

4. Date of Birth (Mo/Day/Year)

5. Sex ☐ Male ☐ Female

6. Marital Status ☐ Married ☐ Single ☐ Widowed ☐ Divorced

7. Other Names Used (including maiden name)

8. Date and Place of Present Marriage (if married)

9. Social Security number

10. Alien Registration Number (if any)

11. Names of Prior Husbands/Wives

12. Date(s) Marriage(s) Ended

13. Has your relative ever been in the U.S.?
☐ Yes ☐ No

14. If your relative is currently in the U.S., complete the following:
He or she last arrived as a (visitor, student, stowaway, without inspection, etc.)

Arrival/Departure Record (I-94) Number

Date arrived (Month/Day/Year)

Date authorized stay expired, or will expire as shown on Form I-94 or I-95

15. Name and address of present employer (if any)

Date this employment began (Month/Day/Year)

16. Has your relative ever been under immigration proceedings?
☐ Yes ☐ No Where ________ When ________
☐ Exclusion ☐ Deportation ☐ Rescission ☐ Judicial Proceedings

INITIAL RECEIPT	RESUBMITTED	RELOCATED		COMPLETED		
		Rec'd	Sent	Approved	Denied	Returned

Form I-130 (Rev. 02-28-87) N

BEST COPY AVAILABLE

C. (Continued) Information about your alien relative

16. List husband/wife and all children of your relative (if your relative is your husband/wife, list only his or her children).

Name	Relationship	Date of Birth	Country of Birth

17. Address in the United States where your relative intends to reside

(Number and Street) (Town or City) (State)

18. Your relative's address abroad

(Number and Street) (Town or City) (Province) (Country)

19. If your relative's native alphabet is other than Roman letters, write his/her name and address abroad in the native alphabet:

(Name) (Number and Street) (Town or City) (Province) (Country)

20. If filing for your husband/wife, give last address at which you both lived together: From To

(Name) (Apt. No.) (Town or City) (State or Province) (Country) (Month) (Year) (Month) (Year)

21. Check the appropriate box below and give the information required for the box you checked:

☐ **Your relative will apply for a visa abroad at the American Consulate in** ____________ (City) (Country)

☐ **Your relative is in the United States and will apply for adjustment of status to that of a lawful permanent resident in the office of the Immigration and Naturalization Service at** ____________ (City) (State) **. If your relative is not eligible for adjustment of status, he or she will apply for a visa abroad at the American Consulate in** ____________ (City) (Country).

(Designation of a consulate outside the country of your relative's last residence does not guarantee acceptance for processing by that consulate. Acceptance is at the discretion of the designated consulate.)

D. Other Information

1. If separate petitions are also being submitted for other relatives, give names of each and relationship.

2. Have you ever filed a petition for this or any other alien before? ☐ Yes ☐ No

If "Yes," give name, place and date of filing, and result.

Warning: The INS investigates claimed relationships and verifies the validity of documents. The INS seeks criminal prosecutions when family relationships are falsified to obtain visas.

Penalties: You may, by law be imprisoned for not more than five years, or fined $250,000, or both, for entering into a marriage contract for the purpose of evading any provision of the immigration laws and you may be fined up to $10,000 or imprisoned up to five years or both, for knowingly and willfully falsifying or concealing a material fact or using any false document in submitting this petition.

Your Certification

I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Furthermore, I authorize the release of any information from my records which the Immigration and Naturalization Service needs to determine eligibility for the benefit that I am seeking.

Signature ____________ **Date** ____________ **Phone Number** ____________

Signature of Person Preparing Form If Other than Above

I declare that I prepared this document at the request of the person above and that it is based on all information of which I have any knowledge.

(Print Name) (Address) (Signature) (Date)

Volag Number ____________ **G-28 ID Number** ____________

SAMPLE FORM I-130

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NOTICE TO PERSONS FILING FOR SPOUSES IF MARRIED LESS THAN TWO YEARS

Pursuant to section 216 of the Immigration and Nationality Act, your alien spouse may be granted conditional permanent resident status in the United States as of the date he or she is admitted or adjusted to conditional status by an officer of the Immigration and Naturalization Service. Both you and your conditional permanent resident spouse are required to file a petition, Form I-751, Joint Petition to Remove Conditional Basis of Alien's Permanent Resident Status, during the ninety day period immediately before the second anniversary of the date your alien spouse was granted conditional permanent residence.

Otherwise, the rights, privileges, responsibilities and duties which apply to all other permanent residents apply equally to a conditional permanent resident. A conditional permanent resident is not limited to the right to apply for naturalization, to file petitions in behalf of qualifying relatives, or to reside permanently in the United States as an immigrant in accordance with the immigration laws.

Failure to file Form I-751, Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status, will result in termination of permanent residence status and initiation of deportation proceedings.

SAMPLE FORM

NOTE: You must complete items 1 through 6 to assure that petition approval is recorded. Do not write in the section below item 6.

1. Name of relative (Family name in CAPS) (First) (Middle)

2. Other names used by relative (Including maiden name)

3. Country of relative's birth

4. Date of relative's birth (Month/Day/Year)

5. Your name (Last name in CAPS) (First) (Middle)

6. Your phone number

Action Stamp

SECTION

☐ 201 (b)(spouse)
☐ 201 (b)(child)
☐ 201 (b)(parent)
☐ 203 (a)(1)
☐ 203 (a)(2)
☐ 203 (a)(4)
☐ 203 (a)(5)

DATE PETITION FILED

☐ STATESIDE CRITERIA GRANTED

SENT TO CONSUL AT:

Relative Petition Card
Form I-130A (Rev. 02-28-87) N

CHECKLIST

Have you answered each question?
Have you signed the petition?
Have you enclosed:

- ☐ The filing fee for each petition?
- ☐ Proof of your citizenship or lawful permanent residence?
- ☐ All required supporting documents for each petition?

If you are filing for your husband or wife have you included:

- ☐ Your picture?
- ☐ His or her picture?
- ☐ Your G-325A?
- ☐ His or her G-325A?

OMB No. 1115-0062

U. S. Department of Justice
Immigration and Naturalization Service

Affidavit of Support

(ANSWER ALL ITEMS: FILL IN WITH TYPEWRITER OR PRINT IN BLOCK LETTERS IN INK.)

I, ______________________ (Name), *residing at* ______________________ (Street and Number)

______ (City) ______ (State) ______ (ZIP Code if in U.S.) ______ (Country)

BEING DULY SWORN DEPOSE AND SAY:

1. I was born on ______ (Date) at ______ (City) ______ (Country)

   If you are ***not*** a native born United States citizen, answer the following as appropriate:
   a. If a United States citizen through naturalization, give certificate of naturalization number ______
   b. If a United States citizen through parent(s) or marriage, give citizenship certificate number ______
   c. If United States citizenship was derived by some other method, attach a statement of explanation.
   d. If a lawfully admitted permanent resident of the United States, give "A" number ______

2. That I am ______ years of age and have resided in the United States since (date) ______
3. That this affidavit is executed in behalf of the following person:

Name		Sex	Age
Citizen of--(Country)	Marital Status	Relationship to Deponent	
Presently resides at--(Street and Number)	(City)	(State)	(Country)

Name of spouse and children accompanying or following to join person:

Spouse	Sex	Age	Child	Sex	Age
Child	Sex	Age	Child	Sex	Age
Child	Sex	Age	Child	Sex	Age

4. That this affidavit is made by me for the purpose of assuring the United States Government that the person(s) named in item 3 will not become a public charge in the United States.

5. That I am willing and able to receive, maintain and support the person(s) named in item 3. That I am ready and willing to deposit a bond, if necessary, to guarantee that such person(s) will not become a public charge during his or her stay in the United States, or to guarantee that the above named will maintain his or her nonimmigrant status if admitted temporarily and will depart prior to the expiration of his or her authorized stay in the United States.

6. That I understand this affidavit will be binding upon me for a period of three (3) years after entry of the person(s) named in item 3 and that the information and documentation provided by me may be made available to the Secretary of Health and Human Services and the Secretary of Agriculture, who may make it available to a public assistance agency.

7. That I am employed as, or engaged in the business of ______ (Type of Business) with ______ (Name of concern)

   at ______ (Street and Number) ______ (City) ______ (State) ______ (Zip Code)

   I derive an annual income of *(if self-employed, I have attached a copy of my last income tax return or report of commercial rating concern which I certify to be true and correct to the best of my knowledge and belief. See instruction for nature of evidence of net worth to be submitted.)* $______

   I have on deposit in savings banks in the United States $______
   I have other personal property, the reasonable value of which is $______

Form I-134 (Rev. 12-1-84) Y

OVER

BEST COPY AVAILABLE

I have stocks and bonds with the following market value, as indicated on the attached list which I certify to be true and correct to the best of my knowledge and belief. $ ____________

I have life insurance in the sum of $ ____________

With a cash surrender value of $ ____________

I own real estate valued at $ ____________

With mortgages or other encumbrances thereon amounting to $ ____________

Which is located at ____

(Street and Number) (City) (State) (Zip Code)

8. That the following persons are dependent upon me for support: *(Place an "X" in the appropriate column to indicate whether the person named is **wholly** or **partially** dependent upon you for support.)*

Name of Person	Wholly Dependent	Partially Dependent	Age	Relationship to Me

9. That I have previously submitted affidavit(s) of support for the following person(s). If none, state "*None*"

Name Date submitted

____

____

____

10. That I have submitted visa petition(s) to the Immigration and Naturalization Service on behalf of the following person(s). If none, state none.

Name Relationship Date submitted

____

____

____

SAMPLE FORM I-134

11 ***(Complete this block only if the person named in item 3 will be in the United States temporarily.)***

That I ☐ do intend ☐ do not intend, to make specific contributions to the support of the person named in item 3. *(If you check "do intend", indicate the exact nature and duration of the contributions. For example, if you intend to furnish room and board, state for how long and, if money, state the amount in United States dollars and state whether it is to be given in a lump sum, weekly, or monthly, or for how long.)*

____

____

____

OATH OR AFFIRMATION OF DEPONENT

I acknowledge at that I have read Part III of the Instructions, Sponsor and Alien Liability, and am aware of my responsibilities as an immigrant sponsor under the Social Security Act, as amended, and the Food Stamp Act, as amended.

I swear (affirm) that I know the contents of this affidavit signed by me and the statements are true and correct.

Signature of deponent ____

Subscribed and sworn to (affirmed) before me this ________ ***day of*** ____________________, 19 ________

at ______________________________ ***My commission expires on*** ____________________

Signature of Officer Administering Oath ______________________________ ***Title*** ____________________

If affidavit prepared by other than deponent, please complete the following: I declare that this document was prepared by me at the request of the deponent and is based on all information of which I have knowledge.

____

(Signature) ***(Address)*** ***(Date)***

(Please tear off this sheet before submitting Affidavit)

U. S. Department of Justice
Immigration and Naturalization Service

Affidavit of Support

INSTRUCTIONS

I. EXECUTION OF AFFIDAVIT. A separate affidavit must be submitted for each person. You must sign the affidavit in your full, true and correct name and affirm or make it under oath. If you are **in the United States** the affidavit may be sworn or affirmed before an immigration officer without the payment of fee, or before a notary public or other officer authorized to administer oaths for general purposes, in which case the official seal or certificate of authority to administer oaths must be affixed. If you are **outside the United States** the affidavit must be sworn to or affirmed before a United States consular or immigration officer.

II. SUPPORTING EVIDENCE. The deponent must submit in duplicate evidence of income and resources, as appropriate:

A. Statement from an officer of the bank or other financial institution in which you have deposits giving the following details regarding your account:
1. Date account opened.
2. Total amount deposited for the past year.
3. Present balance.

B. Statement of your employer on business stationery, showing:
1. Date and nature of employment.
2. Salary paid.
3. Whether position is temporary or permanent.

C. If self-employed:
1. Copy of last income tax return filed or,
2. Report of commercial rating concern.

D. List containing serial numbers and denominations of bonds and name of record owner(s).

III. SPONSOR AND ALIEN LIABILITY. Effective October 1, 1980, amendments to section 1614(f) of the Social Security Act and Part A of Title XVI of the Social Security Act establish certain requirements for determining the eligibility of aliens who apply for the first time for Supplemental Security Income (SSI) benefits. Effective October 1, 1981, amendments to section 415 of the Social Security Act establish similar requirements for determining the eligibility of aliens who apply for the first time for Aid to Families with Dependent Children (AFDC) benefits. Effective December 22, 1981, amendments to the Food Stamp Act of 1977 affect the eligibility of alien participation in the Food Stamp Program. These amendments require that the income and resources of any person who, as the sponsor of an alien's entry into the United States, executes an affidavit of support or similar agreement on behalf of the alien, and the income and resources of the sponsor's spouse (*if living with the sponsor*) shall be deemed to be the income and resources of the alien under formulas for determining eligibility for SSI, AFDC, and Food Stamp benefits during the three years following the alien's entry into the United States.

An alien applying for SSI must make available to the Social Security Administration documentation concerning his or her income and resources and those of the sponsor including information which was provided in support of the application for an immigrant visa or adjustment of status. An alien applying for AFDC or Food Stamps must make similar information available to the State public assistance agency. The Secretary of Health and Human Services and the Secretary of Agriculture are authorized to obtain copies of any such documentation submitted to INS or the Department of State and to release such documentation to a State public assistance agency.

Sections 1621(e) and 415(d) of the Social Security Act and subsection 5(i) of the Food Stamp Act also provide that an alien and his or her sponsor shall be jointly and severably liable to repay any SSI, AFDC, or Food Stamp benefits which are incorrectly paid because of misinformation provided by a sponsor or because of a sponsor's failure to provide information. Incorrect payments which are not repaid will be withheld from any subsequent payments for which the alien or sponsor are otherwise eligible under the Social Security Act or Food Stamp Act, except that the sponsor was without fault or where good cause existed.

These provisions do not apply to the SSI, AFDC or Food Stamp eligibility of aliens admitted as refugees, granted political asylum by the Attorney General, or Cuban Haitian entrants as defined in section 501(e) of P.L. 96-422 and of dependent children of the sponsor or sponsor's spouse. They also do not apply to the SSI or Food Stamp eligibility of an alien who becomes blind or disabled after admission into the United States for permanent residency.

IV. AUTHORITY/USE/PENALTIES. Authority for the collection of the information requested on this form is contained in 8 U.S.C. 1182(a)(15), 1184(a), and 1258. The information will be used principally by the Service, or by any consular officer to whom it may be furnished, to support an alien's application for benefits under the Immigration and Nationality Act and specifically the assertion that he or she has adequate means of financial support and will not become a public charge. Submission of the information is voluntary. It may also, as a matter of routine use, be disclosed to other federal, state, local and foreign law enforcement and regulatory agencies, including the Department of Health and Human Services, the Department of Agriculture, the Department of State, the Department of Defense and any component thereof (if the deponent has served or is serving in the armed forces of the United States), the Central Intelligence Agency, and individuals and organizations during the course of any investigation to elicit further information required to carry out Service functions. Failure to provide the information may result in the denial of the alien's application for a visa, or his or her exclusion from the United States.

Form I-134 (Rev. 12-1-84) Y

U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-0061
Immigrant Petition for Alien Worker

START HERE - Please Type or Print

Part 1. Information about the person or organization filing this petition.

If an individual is filing, use the top Name line. Organizations should use the second line.

Family Name	Given Name	Middle Initial
Company or Organization		

Address - Attn:

Street Number and Name		Room #
City	State or Province	
Country		ZIP/Postal Code
IRS Tax #	Social Security #	

Part 2. Petition Type.

This petition is being filed for: (check one)

- a. ☐ An alien of extraordinary ability
- b. ☐ An outstanding professor or researcher
- c. ☐ A multinational executive or manager
- d. ☐ A member of the professions holding an advanced degree or an alien of exceptional ability
- e. ☐ A skilled worker (requiring at least two years of specialized training or experience) or professional
- f. ☐ An employee of a U.S. business operating in Hong Kong
- g. ☐ Any other worker (requiring less than two years training or experience)

Part 3. Information about the person you are filing for.

Family Name	Given Name	Middle Initial

Address - C/O

Street # and Name		Apt. #
City	State or Province	
Country		Zip or Postal Code

Date of Birth (month/day/year)		Country of Birth
Social Security # (if any)		A # (if any)
If in the U.S.	Date of Arrival (month/day/year)	I-94#
	Current Nonimmigrant Status	Expires on (month/day/year)

Part 4. Processing Information.

Below give the U.S. Consulate you want notified if this petition is approved and if any requested adjustment of status cannot be granted.

U.S Consulate: City Country

Form I-140 (Rev. 12-2-91) ***Continued on back.***

FOR INS USE ONLY

Returned	Receipt
Resubmitted	
Reloc Sent	
Reloc Rec'd	
☐ Petitioner Interviewed ☐ Beneficiary Interviewed	

Classification
☐ 203(b)(1)(A) Alien Of Extraordinary Ability
☐ 203(b)(1)(B) Outstanding Professor or Researcher
☐ 203(b)(1)(C) Multi-national executive or manager
☐ 203(b)(2) Member of professions w/adv degree or of exceptional ability
☐ 203(b)(3) (A) (i) Skilled worker
☐ 203(b)(3) (A) (ii) Professional
☐ 203(b)(3) (A) (iii) Other worker
☐ Sec. 124 IMMACT-Employee of U.S. business in Hong Kong

Priority Date	Consulate

Remarks

Action Block

To Be Completed by *Attorney or Representative*, if any
☐ Fill in box if G-28 is attached to represent the petitioner

VOLAG#

ATTY State License #

SAMPLE FORM I-140

Part 4. Processing Information. *(continued)*

If you gave a U. S. address in Part 3, print the person's foreign address below. If his/her native alphabet does not use Roman letters, print his/her name and foreign address in the native alphabet.

Name	Address

Are you filing any other petitions or applications with this one?	☐ No	☐ yes attach an explanation
Is the person you are filing for in exclusion or deportation proceedings?	☐ No	☐ yes attach an explanation
Has an immigrant visa petition ever been filed by or in behalf of this person?	☐ No	☐ yes attach an explanation

Part 5. Additional information about the employer.

Type of petitioner (check one) ☐ Self ☐ Individual U.S. Citizen ☐ Company or organization ☐ Permanent Resident ☐ Other explain ______________________

If a company, give the following:

Type of business

Date Established	Current # of employees	Gross Annual Income	Net Annual Income

If an individual, give the following: Occupation	Annual Income

Part 6. Basic information about the proposed employment.

Job Title	Nontechnical description of job

Address where the person will work if different from address in Part 1.

Is this a full-time position? ☐ yes ☐ No (hours per week __________) Wages per week

Is this a permanent position?: ☐ yes ☐ No Is this a new position? ☐ yes ☐ No

Part 7. Information on spouse and all children of the person you are filing for.

Provide an attachment listing the family members of the person you are filing for. Be sure to include their full name, relationship, date and country of birth, and present address.

Part 8. Signature. *Read the information on penalties in the instructions before completing this section.*

I certify under penalty of perjury under the laws of the United States of America that this petition, and the evidence submitted with it, is all true and correct. I authorize the release of any information from my records which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking.

Signature Date

Please Note: *If you do not completely fill out this form, or fail to submit required documents listed in the instructions, you cannot be found eligible for the requested document and this application may to be denied.*

Part 9. Signature of person preparing form if other than above. *(Sign below)*

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature Print Your Name Date

Firm Name and Address

SAMPLE FORM I-140

Form I-140 (Rev. 12-2-91)

U.S. Department of Justice
Immigration and Naturalization Service

Notice to Student or Exchange Visitor

OMB No. 1115–0068
Expires 8–31–85

Your admission to the United States has been LIMITED TO 30 DAYS because you do not have the document checked below.

☐ The correct revision of Form I–20A-B or I–20M-N executed by the school to which you are destined

☐ Form IAP-66 executed by the sponsor of the exchange program to which you are destined

You must obtain the required form and submit it to the United States Immigration and Naturalization Service office at the location and before the date shown below. If the first box above is checked, you must complete page 2 of the Form I–20A or I–20M. If the second box above is checked, you must complete Form IAP–66. If you are a student, you must also submit your Form I–20 ID copy if you have been issued such a form. If you have not been issued a Form I–20 ID copy, you must submit your Form I–94 (Arrival–Departure Record) and an unendorsed Form I–20 ID copy with your name, date of birth and country of citizenship filled out. If you are an exchange visitor, you must submit your Form I–94. If you are accompanied by your spouse and children, you should also submit the Forms I–94 issued to them. (If your I–94 is attached to your passport, the permit should be removed for this purpose). DO NOT SEND IN YOUR PASSPORT.

YOU MUST ALSO COMPLETE THE BLOCK BELOW BEFORE SUBMITTING THIS FORM TO THE IMMIGRATION AND NATURALIZATION SERVICE.

SAMPLE FORM I-515

My name is: (Last) (First) (Middle)		
My Address in the U.S. will be:		My passport is valid to (Date):
Consular post where my visa was issued:	Date my visa was issued:	Number of my visa:
The name of my accompanying spouse (if any) is:		Spouse's passport is valid to:
My accompanying children's names are:		Their passports are valid to:

THIS FORM, FULLY EXECUTED, AND REQUIRED DOCUMENTS MUST BE SUBMITTED BEFORE

______________________________ to the UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE OFFICE LOCATED AT:

Form I–515 (Rev. 8–2–83) Y

GPO 801-808

U.S. Department of Justice
Immigration and Naturalization Service

OMB Approval No. 1115-0060
Certification by Designated School Official

SECTION A. This section must be completed by student as appropriate (Please print or type) :

1. Name: *(Family in CAPS)* *(First)* *(Middle)*	2. Date of birth:
3. Student admission number:	4. Date first granted F-1 or M-1 status:
5. Level of education being sought:	6. Student's major field of study:

7. Describe the proposed employment for practial training:

Beginning date : Ending date: Number of hours per week:

8. List all periods of previously authorized employment for practical training:

A. Curricular or work study:	B. Post completion of studies

SAMPLE FORM I-538

Signature of student ____________________ Date: __________

SECTION B. This Section must be completed by the designated school official of the school the student is attending or was last authorized to attend:

9. I hereby certify that:

The student named above:
- ☐ Is taking a full course of study at this school, and the expected date of completion is: __________
- ☐ Is taking less than a full course of study at this school because __________
- ☐ Completed the course of study at this school on (date): __________
- ☐ Did not complete the course of study. Terminated attendance on (date) __________

Check one:

☐ A. The employment is for practical training in the student's field of study. The student has been in the educational program for at least 9 months and is eligible for the requested practical training in accordance with INS regulations at 8CFR 214.2(f) (10).

☐ B. The endorsement for off-campus employment is based on the wage-and-labor attestation filed by the employer in accordance with the requirements set forth by the Secretary of Labor. The student has been in F-1 status for at least one year and is in good academic standing. Copy of the employer's attestation is attached.

☐ C. The employment is for an internship with a recognized international organization and is within the scope of the organization's sponsorship. The student has been in F-1 status for at least 9 months and is in good academic standing.

10. Name and title of DSO	Signature	Date
11. Name of school	School file number	Telephone no.

For Official Use only
Microfilm Index Number:

Form I-538 (Rev. 07/08/91)N

(See instructions on reverse)

Instructions

A Student seeking authorization for off-campus employment (F-1 only) or practical training (F-1 and M-1) must submit as supporting documentation to Form I-765, Application for Employment Authorization, a certification by the designated school official (DSO) of the school they were last authorized to attend. Certification by the DSO is required of all students (F-1 and M-1) seeking authorization for employment off campus or practical training, including required or optional curricular practical training. The DSO must certify on Form I-538 that the proposed employment is directly related to the student's field of study. A copy of the DSO's certification must be mailed to the STSC date processing center, P.O. Box 140, Highway 25 South, London, Ky. 40741.

All students requesting school certification must complete questions 1 through 6. Students requesting recommendation for practical training must complete questions 7 and 8. Answers to questions 7 through 9 may be continued on this page if needed.

M-1 students seeking extensions of stay must submit a completed Form I-539, Application to Extend time of Temporary Stay, supported by a current Form I-20M-N as appropriate.

Reporting Burden

Public reporting burden for this collection of information is estimated to average 4 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Department of Justice, Immigration and Naturalization Service (Room 5304), Washington, D.C. 20536; and to the Office Management and Budget, Paperwork Reduction Project, OMB No. 1115-0060 Washington, D.C. 20503.

Comments:

Form I-538 (07-08-91) N

U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-0093
Application to Extend/ChangeNonimmigrant Status

START HERE - Please Type or Print

Part 1. Information about you.

Family Name	Given Name	Middle Initial

Address - In Care of:

Street # and Name	Apt. #
City	State
Zip Code	
Date of Birth (month/day/year)	Country of Birth
Social Security # (if any)	A# (if any)
Date of Last Arrival Into the U.S.	I-94#
Current Nonimmigrant Status	Expires on (month/day/year)

Part 2. Application Type.

(See instructions for fee.)

1. **I am applying for:** (check one)
   - a. ☐ an extension of stay in my current status
   - b. ☐ a change of status. The new status I am requesting is: ____________
2. **Number of people included in this application:** (check one)
   - a. ☐ I am the only applicant
   - b. ☐ Members of my family are filing this application with me. The Total number of people included in this application is ____________ (complete the supplement for each co-applicant)

Part 3. Processing information.

1. I/We request that my/our current or requested status be extended until (month/day/year) ____________
2. Is this application based on an extension or change of status already granted to your spouse, child or parent?
   ☐ No ☐ Yes (receipt # ____________)
3. Is this application being filed based on a separate petition or application to give your spouse, child or parent an extension or change of status?
   ☐ No ☐ Yes, filed with this application ☐ Yes, filed previously and pending with INS
4. If you answered yes to question 3, give the petitioner or applicant name:

If the application is pending with INS, also give the following information.

Office filed at ____________ Filed on ____________ (date)

Part 4. Additional information.

1. For applicant #1, provide passport information:

Country of issuance	Valid to: (month/day/year)

2. Foreign address:

Street # and Name	Apt#
City or Town	State or Province
Country	Zip or Postal Code

Form I-539 (Rev. 12-2-91)

Continued on back.

FOR INS USE ONLY

Returned Date Date	Receipt
Resubmitted Date Date	
Reloc Sent Date Date	
Reloc Rec'd Date Date	
☐ Applicant Interviewed	

☐ *Extension Granted* to (date): ____________

☐ *Change of Status/Extension Granted*
New Class: ________ To (date): ________

If denied:
☐ Still within period of stay
☐ V/D to: ____________
☐ S/D to: ____________
☐ Place under docket control

Remarks

Action Block

To Be Completed by *Attorney or Representative*, if any

☐ Fill in box if G-28 is attached to represent the applicant

VOLAG#

ATTY State License #

SAMPLE FORM

201

Part 4. Additional Information. *(continued)*

3. **Answer the following questions. If you answer yes to any question, explain on separate paper.**	Yes	No
a. Are you, or any other person included in this application, an applicant for an immigrant visa or adjustment of status to permanent residence?		
b. Has an immigrant petition ever been filed for you, or for any other person included in this application?		
c. Have you, or any other person included in this application ever been arrested or convicted of any criminal offense since last entering the U.S.?		
d. Have you, or any other person included in this application done anything which violated the terms of the nonimmigrant status you now hold?		
e. Are you, or any other person included in this application, now in exclusion or deportation proceedings?		
f. Have you, or any other person included in this application, been employed in the U.S. since last admitted or granted an extension or change of status?		

If you answered YES to question 3f, give the following information on a separate paper: Name of person, name of employer, address of employer, weekly income, and whether specifically authorized by INS.

If you answered NO to question 3f, fully describe how you are supporting yourself on a separate paper. Include the source and the amount and basis for any income.

Part 5. Signature. *Read the information on penalties in the instructions before completing this section. You must file this application while in the United States.*

I certify under penalty of perjury under the laws of the United States of America that this application, and the evidence submitted with it, is all true and correct. I authorize the release of any information from my records which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking.

Signature

Print your name

Date

Please Note: *If you do not completely fill out this form, or fail to submit required documents listed in the instructions, you cannot be found eligible for the requested document and this application will have to be denied.*

Part 6. Signature of person preparing form if other than above. *(Sign below)*

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature

Print Your Name

Date

Firm Name
and Address

(Please remember to enclose the mailing label with your application)

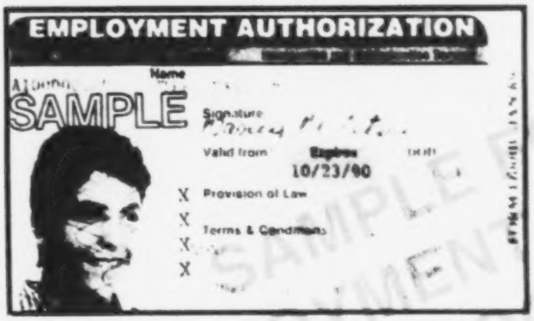
Form I-539 (Rev. 12-2-91)

Supplement-1

Attach to Form I-539 when more than one person is included in the petition or application. *(List each person separately. Do not include the person you named on the form).*

Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Social Security No.		A#
IF IN THE U.S.	Date of Arrival *(month/day/year)*	I-94#	
	Current Nonimmigrant Status:	Expires on *(month/day/year)*	
Country where passport issued	Expiration Date (month/day/year)		
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Social Security No.		A#
IF IN THE U.S.	Date of Arrival *(month/day/year)*	I-94#	
	Current Nonimmigrant Status:	Expires on *(month/day/year)*	
Country where passport issued	Expiration Date (month/day/year)		
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Social Security No.		A#
IF IN THE U.S.	Date of Arrival *(month/day/year)*	I-94#	
	Current Nonimmigrant Status:	Expires on *(month/day/year)*	
Country where passport issued	Expiration Date (month/day/year)		
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Social Security No.		A#
IF IN THE U.S.	Date of Arrival *(month/day/year)*	I-94#	
	Current Nonimmigrant Status:	Expires on *(month/day/year)*	
Country where passport issued	Expiration Date (month/day/year)		
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Social Security No.		A#
IF IN THE U.S.	Date of Arrival *(month/day/year)*	I-94#	
	Current Nonimmigrant Status:	Expires on *(month/day/year)*	
Country where passport issued	Expiration Date (month/day/year)		

SAMPLE FORM I-539



EMPLOYMENT AUTHORIZATION

SAMPLE

Name

Signature

Valid from

Expires

10/23/90

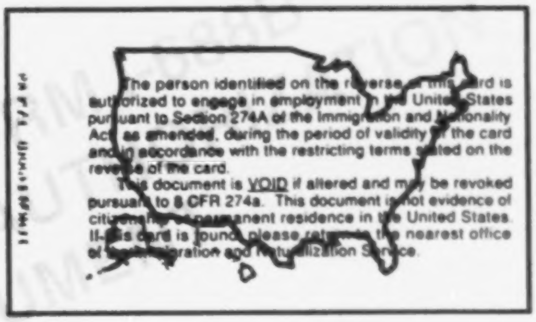
X Provision of Law

X

X Terms & Conditions

X

X



The person identified on the reverse of this card is authorized to engage in employment in the United States pursuant to Section 274A of the Immigration and Nationality Act as amended, during the period of validity of the card and in accordance with the restricting terms stated on the reverse of the card.

This document is VOID if altered and may be revoked pursuant to 8 CFR 274a. This document is not evidence of citizenship or permanent residence in the United States. If this card is found, please return to the nearest office of the Immigration and Naturalization Service.

SAMPLE FORM I-688B
EMPLOYMENT AUTHORIZATION DOCUMENT

U. S. Department of Justice
Immigration and Naturalization Service

OMB # 1115-0163
Application for Employment Authorization

Do Not Write In This Block **Please Complete Both Sides of Form**

Remarks	Action Stamp	Fee Stamp
A#		
Applicant is filing under 274a.12 ________		

☐ Application Approved. Employment Authorized / Extended (Circle One) ______________________ (Date).
until ______________________ (Date).
Subject to the following conditions: ______________________
☐ Application Denied.
☐ Failed to establish eligibility under 8 CFR 274a.12 (a) or (c).
☐ Failed to establish economic necessity as required in 8 CFR 274a.12(c) (13) (14) (18) and 8 CFR 214.2(f)

I am applying for: ☐ Permission to accept employment
☐ Replacement (of lost employment authorization document).
☐ Extension of my permission to accept employment (attach previous employment authorization document).

1. Name (Family Name in CAPS) (First) (Middle)
2. Other Names Used (Include Maiden Name)
3. Address in the United States (Number and Street) (Apt. Number)
(Town or City) (State/Country) (ZIP Code)
4. Country of Citizenship/Nationality
5. Place of Birth (Town or City) (State/Province) (Country)
6. Date of Birth (Month/Day/Year)
7. Sex ☐ Male ☐ Female
8. Marital Status ☐ Married ☐ Single ☐ Widowed ☐ Divorced
9. Social Security Number (Include all Numbers you have ever used)
10. Alien Registration Number (A-Number) or I-94 Number (if any)
11. Have you ever before applied for employment authorization from INS?
☐ Yes (If yes, complete below) ☐ No
Which INS Office? Date(s)
Results (Granted or Denied - attach all documentation)
12. Date of Last Entry into the U.S. (Month/Day/Year)
13. Place of Last Entry into the U.S.
14. Manner of Last Entry (Visitor, Student, etc.)
15. Current Immigration Status (Visitor, Student, etc.)
16. Go to the Eligibility Section on the reverse of this form and check the box which applies to you. In the space below, place the letter and number of the box you selected from the reverse side:
Eligibility under 8 CFR 274a.12
(   ) (   ) (   )

Complete the reverse of this form before signature.

Your Certification: I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Furthermore, I authorize the release of any information which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking. I have read the reverse of this form and have checked the appropriate block, which is identified in item #16, above.

Signature Telephone Number Date

Signature of Person Preparing Form if Other Than Above: I declare that this document was prepared by me at the request of the applicant and is based on all information of which I have any knowledge.

Print Name Address *Signature* Date

Initial Receipt	Resubmitted	Relocated		Completed		
		Rec'd	Sent	Approved	Denied	Returned

Form I-765 (Rev. 12 7 90) N Page 2

Eligibility

GROUP A

The current immigration laws and regulations permit certain classes of aliens to work in the United States. If you are an alien described below, you do not need to request that employment authorization be granted to you, but you do need to request a document to show that you are able to work in the United States. For aliens in classes (a) (3) through (a) (11), **NO FEE** will be required for the original card or for extension cards. A **FEE** will be required if a replacement employment authorization document is needed. A **FEE IS REQUIRED** for aliens in item (a) (12) who are over the age of 14 years and under the age of 65 years.

Place an X in the box next to the number which applies to you.

☐ (a) (3) - I have been admitted to the United States as a refugee.

☐ (a) (4) - I have been paroled into the United States as a refugee.

☐ (a) (5) - My application for asylum has been granted.

☐ (a) (6) - I am the fiance(e) of a United States citizen and I have K-1 nonimmigrant status; OR I am the dependent of a fiance(e) of a United States citizen and I have K-2 nonimmigrant status.

☐ (a) (7) - I have N-8 or N-9 nonimmigrant status in the United States.

☐ (a) (8) - I am a citizen of the Federated States of Micronesia or of the Marshall Islands.

☐ (a) (10) - I have been granted withholding of deportation.

☐ (a) (11) - I have been granted extended voluntary departure by the Attorney General.

☐ (a) (12) - I am an alien who has been registered for Temporary Protected Status (TPS) and I want an employment authorization document. **FEE REQUIRED.**

GROUP C

The immigration law and regulations allow certain aliens to apply for employment authorization. If you are an alien described in one of the classes below you may request employment authorization from the INS and, if granted, you will receive an employment authorization document. The instruction **FEE REQUIRED** printed below refers to your initial document, replacement, and extension.

Place an X in the box next to the number which applies to you.

☐ (c) (1) - I am the dependent of a foreign government official (A-1 or A-2). I have attached certification from the Department of State recommending employment. **NO FEE.**

☐ (c) (2) - I am the dependent of an employee of the Coordination Council of North American Affairs and I have E-1 nonimmigrant status. I have attached certification of my status from the American Institute of Taiwan. **FEE REQUIRED.**

☐ (c) (3) (i) - I am a foreign student (F-1). I have attached certification from the designated school official recommending employment for economic necessity. I have also attached my INS Form I-20 ID copy. **FEE REQUIRED.**

☐ (c) (3) (ii) - I am a foreign student (F-1). I have attached certification from the designated school official recommending employment for practical training. I have also attached my INS Form I-20 ID copy. **FEE REQUIRED.**

☐ (c) (3) (iii) - I am a foreign student (F-1). I have attached certification from my designated school official and I have been offered employment under the sponsorship of an international organization within the meaning of the International Organization Immunities Act. I have certification from this sponsor and I have also attached my INS Form I-20 ID copy. **FEE REQUIRED.**

☐ (c) (4) - I am the dependent of an officer or employee of an international organization (G-1 or G-4). I have attached certification from the Department of State recommending employment. **NO FEE.**

☐ (c) (5) - I am the dependent of an exchange visitor and I have J-2 nonimmigrant status. **FEE REQUIRED.**

☐ (c) (6) - I am a vocational foreign student (M-1). I have attached certification from the designated school official recommending employment for practical training. I have also attached my INS Form I-20ID Copy. **FEE REQUIRED.**

☐ (c) (7) - I am the dependent of an individual classified as NATO-1 through NATO-7. **FEE REQUIRED.**

☐ (c) (8) - I have filed a non-frivolous application for asylum in the United States and the application is pending. **FEE REQUIRED FOR REPLACEMENT ONLY.**

☐ (c) (9) - I have filed an application for adjustment of status to lawful permanent resident status and the application is pending. **FEE REQUIRED.**

☐ (c) (10) - I have filed an application for suspension of deporation and the application is still pending. **FEE REQUIRED.**

☐ (c) (11) - I have been paroled into the United States for emergent reasons or for reasons in the public interest. **FEE REQUIRED.**

☐ (c) (12) - I am a deportable alien and I have been granted voluntary departure either prior to or after my hearing before the immigration judge. **FEE REQUIRED.**

☐ (c) (13) - I have been placed in exclusion or deportation proceedings. I have not received a final order of deportation or exclusion and I have not been detained. **I understand that I must show economic necessity and I will refer to the instructions concerning "Basic Criteria to Establish Economic Necessity." FEE REQUIRED.**

☐ (c) (14) - I have been granted deferred action by INS as an act of administrative convenience to the government. **I understand that I must show economic necessity and I will refer to the instructions concerning "Basic Criteria to Establish Economic Necessity." FEE REQUIRED.**

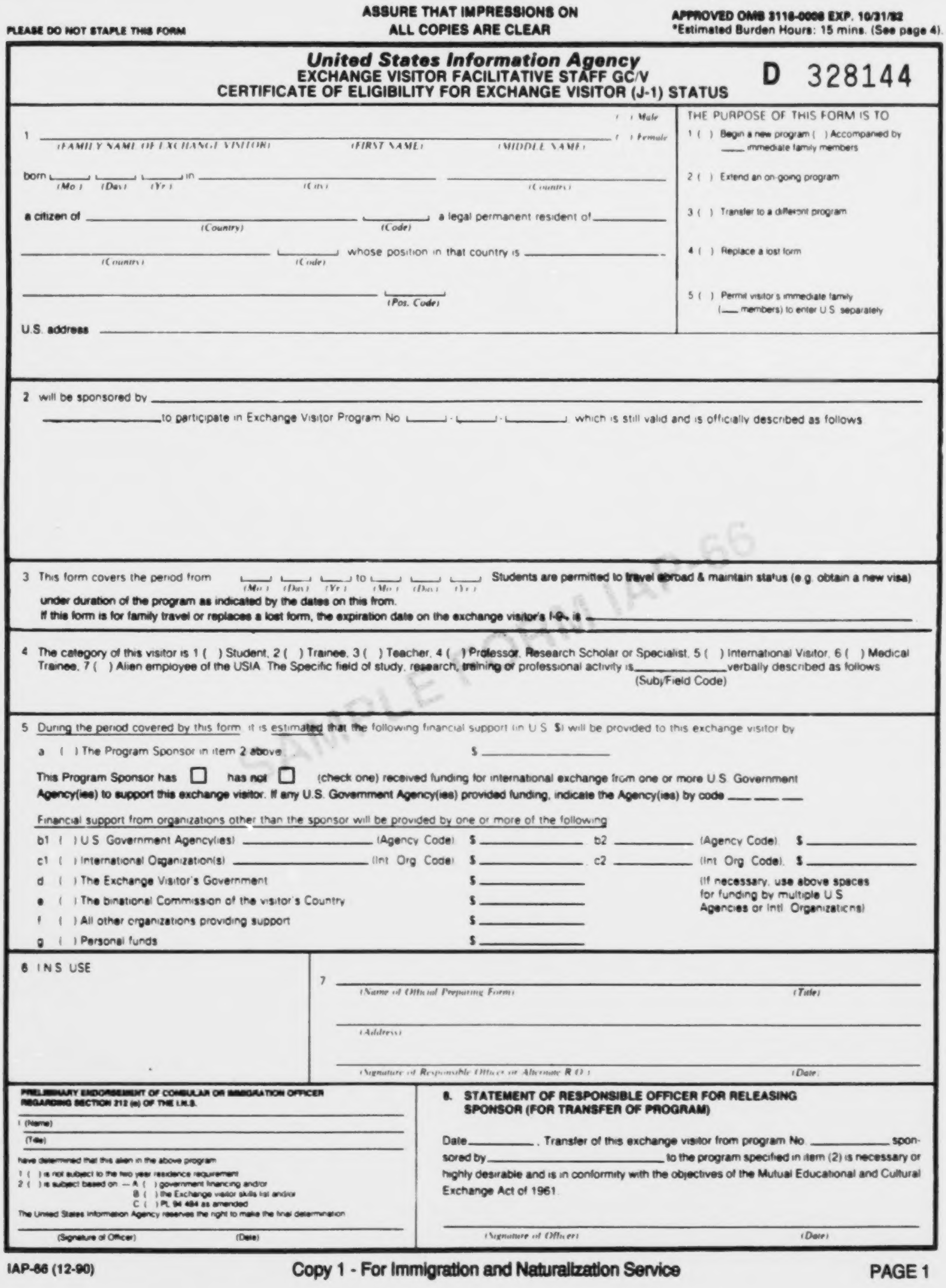
☐ (c) (16) - I entered the United States prior to January 1, 1972 and have been here since January 1, 1972. I have applied for registry as a lawful permanent resident alien and my application is pending. **FEE REQUIRED.**

☐ (c) (17) (i) - I am a (B-1) visitor for business. I am and have been (before coming to the United States) the domestic or personal servant for my employer who is temporarily in the United States. **FEE REQUIRED.**

☐ (c) (17) (ii) - I am a visitor for business (B-1) and am the employee of a foreign airline. I have B-1 nonimmigrant classification because I am unable to obtain visa classification as a treaty trader (E-1). **FEE REQUIRED.**

☐ (c) (18) - I am a deportable alien who has been placed under an order of supervision (OS). **I Understand that I must show economic necessity and I will refer to the instructions concerning "Basic Criteria to Establish Economic Necessity." FEE REQUIRED.**

☐ (c) (19) - I am an alien who is prima facie eligible for Temporary Protected Status (TPS) and (1) INS has not given me a reasonable chance to register during the first 30 days of the registration period **[FEE REQUIRED]**, or (2) INS has not made a final decison as to my eligibility for TPS. **FEE REQUIRED.**



PLEASE DO NOT STAPLE THIS FORM

ASSURE THAT IMPRESSIONS ON ALL COPIES ARE CLEAR

APPROVED OMB 3116-0008 EXP. 10/31/92
***Estimated Burden Hours: 15 mins. (See page 4).**

United States Information Agency
EXCHANGE VISITOR FACILITATIVE STAFF GC/V
CERTIFICATE OF ELIGIBILITY FOR EXCHANGE VISITOR (J-1) STATUS

D 328144

1 ______________________________ ( ) Male ( ) Female
(FAMILY NAME OF EXCHANGE VISITOR) (FIRST NAME) (MIDDLE NAME)

born ____ (Mo) ____ (Day) ____ (Yr) in ______________ (City) ______________ (Country)

a citizen of ______________ (Country) ______ (Code) a legal permanent resident of ______________

______________ (Country) ______ (Code) whose position in that country is ______________

______________ ______ (Pos. Code)

U.S. address ______________________________

THE PURPOSE OF THIS FORM IS TO

1 ( ) Begin a new program ( ) Accompanied by ____ immediate family members
2 ( ) Extend an on-going program
3 ( ) Transfer to a different program
4 ( ) Replace a lost form
5 ( ) Permit visitor's immediate family (____ members) to enter U.S. separately

2 will be sponsored by ______________________________
______________ to participate in Exchange Visitor Program No ____ - ____ - ______ which is still valid and is officially described as follows

3 This form covers the period from ____ (Mo) ____ (Day) ____ (Yr) to ____ (Mo) ____ (Day) ____ (Yr) **Students are permitted to travel abroad & maintain status (e.g. obtain a new visa) under duration of the program as indicated by the dates on this from.**
If this form is for family travel or replaces a lost form, the expiration date on the exchange visitor's I-94 is ______________

4 The category of this visitor is 1 ( ) Student, 2 ( ) Trainee, 3 ( ) Teacher, 4 ( ) Professor, Research Scholar or Specialist, 5 ( ) International Visitor, 6 ( ) Medical Trainee, 7 ( ) Alien employee of the USIA. The Specific field of study, research, training or professional activity is ______ (Subj/Field Code) verbally described as follows

5 During the period covered by this form, it is estimated that the following financial support (in U.S. $) will be provided to this exchange visitor by

a ( ) The Program Sponsor in item 2 above $ ______________

This Program Sponsor has ☐ has not ☐ (check one) received funding for international exchange from one or more U.S. Government **Agency(ies) to support this exchange visitor. If any U.S. Government Agency(ies) provided funding, indicate the Agency(ies) by code** ___ ___ ___

Financial support from organizations other than the sponsor will be provided by one or more of the following

b1 ( ) U.S. Government Agency(ies) ______ (Agency Code) $ ______ b2 ______ (Agency Code) $ ______
c1 ( ) International Organization(s) ______ (Int. Org. Code) $ ______ c2 ______ (Int. Org. Code) $ ______
d ( ) The Exchange Visitor's Government $ ______
e ( ) The binational Commission of the visitor's Country $ ______
f ( ) All other organizations providing support $ ______
g ( ) Personal funds $ ______

(If necessary, use above spaces for funding by multiple U.S. Agencies or Intl. Organizations)

6 I.N.S. USE

7 ______________________________
(Name of Official Preparing Form) (Title)
____
(Address)
____
(Signature of Responsible Officer or Alternate R.O.) (Date)

PRELIMINARY ENDORSEMENT OF CONSULAR OR IMMIGRATION OFFICER REGARDING SECTION 212 (e) OF THE I.N.S.

I (Name) ______________________________
(Title) ______________________________

have determined that this alien in the above program
1 ( ) is not subject to the two year residence requirement
2 ( ) is subject based on — A ( ) government financing and/or
B ( ) the Exchange visitor skills list and/or
C ( ) PL 94 484 as amended
The United States Information Agency reserves the right to make the final determination

____
(Signature of Officer) (Date)

8. STATEMENT OF RESPONSIBLE OFFICER FOR RELEASING SPONSOR (FOR TRANSFER OF PROGRAM)

Date ______, Transfer of this exchange visitor from program No. ______ sponsored by ______________ to the program specified in item (2) is necessary or highly desirable and is in conformity with the objectives of the Mutual Educational and Cultural Exchange Act of 1961.

____
(Signature of Officer) (Date)

IAP-66 (12-90)

Copy 1 - For Immigration and Naturalization Service

PAGE 1

SAMPLE FORM IAP-66

INSTRUCTIONS FOR AND CERTIFICATION BY the alien beneficiary named on page 1 of this Form.

Read and complete this page prior to presentation to a United States consular or immigration official

1. **I understand that the following conditions are applicable to exchange visitors:**

   (a) ***Extension of Stay and Program Transfers.*** **A completed form IAP-66 is required in order to apply for an extension or transfer and may be obtained from or with the assistance of the sponsor. It must be sumitted to the appropriate office of the Immigration and Naturalization Service within fifteen to sixty days before the expiration of the authorized period of stay.**

   (b) ***Limitation on Stay:*** **STUDENTS -as long as they pursue a substantial scholastic program leading to recognized degrees or certificate. Students for whom the sponsor recommends practical training may be permitted to remain for such purpose for an additional period of up to 18 months after receiving their degree or certificate. BUSINESS AND INDUSTRIAL TRAINEES - 18 months. TEACHERS, PROFESSORS, RESEARCH SCHOLARS, and SPECIALISTS - 3 years. INTERNATIONAL VISITORS - 1 year. MEDICAL TRAINEES: Graduate Nurses ; 2 years. Medical Technologists, Medical Record Librarians, Medical Record Technicians, Radiologic Technicians, and other participants in similar categories - the length of the approved training program plus a maximum of 18 months for practical experience, not exceeding a total of 3 years. Medical Interns and Residents - the time typically required to complete the medical specialty involved but limited to 7 years with the possibility of extension if such extension is approved by the Director of the United States Information Agency.**

   (c) *Documentation Required for Admission or Readmission as an Exchange Visitor:* To be eligible for admission or readmission to the United States, an exchange visitor must present the following at the port of entry (1) A valid nonimmigrant visa bearing classification J-1, unless exempt from nonimmigrant visa requirements, (2) A passport valid for six months beyond the anticipated period of admission, unless exempt from passport requirements, (3) A properly executed Form IAP-66. Copies one and two of Form IAP-66 must be surrendered to a United States immigration officer upon arrival in the United States. Copy three may be retained for re entries within a period of previously authorized stay

   (d) *Change of Status:* Exchange visitors are expected to leave the United States upon completing their objective. An exchange visitor who is subject to the two-year home-country physical presence requirement is not eligible to change his/her status while in the United States to any other nonimmigrant category except, if applicable, that of official or employee of a foreign government (A) or of an international organization (G) or member of the family or attendant of either of these types of officials or employees

   (e) *Two-Year Home Country Physical Presence Requirement.* Any exchange visitor whose program is financed in whole or in part, directly or indirectly by either his/her own government or by the United States Government is required to reside in his/her own country for two years following completion of his/her program in the United States before he/she can become eligible for permanent residence (immigration) or for status as a temporary worker ("H") or as an intracompany transferee ("L") Likewise, if an exchange visitor is acquiring a skill which is in short supply in his/her own country (these skills appear on the *Exchange Visitor Skills List*) he/she will be subject to this same two-year home-country residence requirement as well as alien physicians entering the U.S. to receive graduate medical education or training (Section 212(e) of the Immigration and Nationality Act and PL 94 484, as amended)

2. **I seek to enter into, or remain temporarily in, the United States as an exchange visitor under Section 101(a)(15)(J) of the Immigration and Nationality Act, as amended, for a total maximum stay of ________________ *(months or years)* for the purpose of (state type of degree, certificate, or other objective toward which your program participation will be directed. Doctors of medicine should indicate their medical specialty): ____**

   ____,

   and I understand that I shall be permitted to perform only those activities described in Item 2 and 4 on page 1 of this Form.

   I intend to return to (country) ________________________________ where I am (check one) ☐ legal permanent resident ☐ citizen.

3. **My passport numbered ____________________ issued by ____________________ *(Country)* expires on ____________________ *(Mo./Day/Yr.)***

4. **I ☐ have ☐ have not *(check one)* been in the United States previously as an exchange visitor. (If you have been in the United States previously as an exchange visitor, show total length of time: __________ , and dates: ____________________):**

5. **(To be completed only if application is being made for extension of stay or Program transfer. Use a continuation sheet if necessary.) I first entered the United States as an exchange visitor, or acquired exchange visitor status, on ______________ *(Mo./Day/Yr.)* and have engaged in the following activities under the sponsorship of respective institutions listed for each activity *(include program numbers)***

   ____

   ____

6. **I understand that a consular or Immigration Officer will make a preliminary determination on whether I am subject to the two year home country physical present requirement described in item 1(e) above. The United States Information Agency reserves the right to make a final determination. When determined subject, I will accept that determination and comply with the requirement.**

7. **I certify that I have read and I understand the foregoing.**

____________________ ____________________ ____________________

(Signature of Applicant) ***(Place)*** ***(Date Mo Day, Yr.)***

IAP-66 (12-90)

INSTRUCTIONS FOR AND CERTIFICATION BY the alien beneficiary named on page 1 of this Form:

Read and complete this page prior to presentation to a United States consular or immigration official.

I I understand that the following conditions are applicable to exchange visitors

(a) ***Extension of Stay and Program Transfers.*** **A completed form IAP-66 is required in order to effect an extension or transfer and may be obtained from or with the assistance of the sponsor. It must be submitted to the appropriate office of the Immigration and Naturalization Service within fifteen to sixty days before the expiration of the authorized period of stay.**

(b) ***Limitation on Stay:*** **STUDENTS -as long as they pursue a substantial scholastic program leading to recognized degrees or certificate. Students for whom the sponsor recommends practical training may be permitted to remain for such purpose for an additional period of up to 18 months after receiving their degree or certificate. BUSINESS AND INDUSTRIAL TRAINEES - 18 months. TEACHERS, PROFESSORS, RESEARCH SCHOLARS, and SPECIALISTS - 3 years. INTERNATIONAL VISITORS - 1 year. MEDICAL TRAINEES: Graduate Nurses - 2 years. Medical Technologists, Medical Record Librarians, Medical Record Technicians, Radiologic Technicians, and other participants in similar categories - the length of the approved training program plus a maximum of 18 months for practical experience, not exceeding a total of 3 years. Medical Interns and Residents - the time typically required to complete the medical specialty involved but limited to 7 years with the possibility of extension if such extension is approved by the Director of the United States Information Agency.**

(c) *Documentation Required for Admission or Readmission as an Exchange Visitor* To be eligible for admission or readmission to the United States, an exchange visitor must present the following at the port of entry (1) A valid nonimmigrant visa bearing classification J-1, unless exempt from nonimmigrant visa requirements, (2) A passport valid for six months beyond the anticipated period of admission, unless exempt from passport requirements, (3) A properly executed Form IAP-66. Copies one and two of Form IAP-66 must be surrendered to a United States immigration officer upon arrival in the United States. Copy three may be retained for re entries within a period of previously authorized stay

(d) *Change of Status* Exchange visitors are expected to leave the United States upon completing their objective An exchange visitor who is subject to the two-year home-country physical presence requirement is not eligible to change his/her status while in the United States to any other nonimmigrant category except, if applicable, that of official or employee of a foreign government (A) or of an international organization (G) or member of the family or attendant of either of these types of officials or employees

(e) *Two Year Home Country Physical Presence Requirement:* Any exchange visitor whose program is financed in whole or in part, directly or indirectly by either his/her own government or by the United States Government is required to reside in his/her own country for two years following completion of his/her program in the United States before he/she can become eligible for permanent residence (immigration) or for status as a temporary worker ("H") or as an intracompany transferee ("L"). Likewise, if an exchange visitor is acquiring a skill which is in short supply in his/her own country (these skills appear on the *Exchange Visitor Skills List*) he/she will be subject to this same two-year home-country residence requirement as well as alien physicians entering the U.S. to receive graduate medical education or training (Section 212(e) of the Immigration and Nationality Act and PL 94-484, as amended)

(Signature of Applicant)	*(Place)*	*(Date Mo. Day. Yr.)*

IAP-66 (12-85)

NOTICE TO ALL EXCHANGE VISITORS

To facilitate your readmission to the United States after a visit to another country other than a contiguous territory or adjacent islands you should have the Responsible Officer of your sponsoring organization indicate that you continue to be in good standing on this copy of the IAP-66 form.

VALIDATION BY RESPONSIBLE OFFICER

(1) **Exchange visitor is in good standing from** __________ **to** __________

Signature of Responsible Officer

(2) **Exchange visitor is in good standing from** __________ **to** __________

Signature of Responsible Officer

(3) **Exchange visitor is in good standing from** __________ **to** __________

Signature of Responsible Officer

(4) **Exchange visitor is in good standing from** __________ **to** __________

Signature of Responsible Officer

(5) **Exchange visitor is in good standing from** __________ **to** __________

Signature of Responsible Officer

BEST COPY AVAILABLE

INSTRUCTIONS FOR PROGRAM SPONSOR

PROHIBITIONS

1) No one except the Responsible Officer or Alternate Responsible Officer, whose name is recorded with the United States Information Agency, may sign this form.

2) Authorized exchange visitor program sponsors may not transfer forms IAP-66 to any other organization, whether or not that organization has an authorized exchange visitor program.

PROCEDURES

Give copies 1, 2, and 3 (white, yellow and pink) to the exchange visitor for him/her to use in applying for a "J" visa or in applying to the INS for an extension or transfer. If the IAP-66 is to replace a lost form, destroy copies 1 and 2 and give copy 3 to the exchange visitor, being sure to fill in block 3, the expiration date of the visitor's I-94.

EXCHANGE VISITOR FAMILY MEMBERS

If the Exchange Visitor's immediate family members will accompany him/her to the United States or if they will remain in the U.S. at the time the Exchange Visitor extends or transfers his/her program, attach a list (on the Sponsor's letterhead) giving the names, relationships to the Exchange Visitor, and dates and place of birth of the family members. If this form is for the Visitor's family travel attach a similar list.

PURPOSE OF FORM (Upper right-hand corner)
NEW PROGRAM: Check this box for an individual who is beginning an Exchange Visitor Program and who is not now an Exchange Visitor in this or any other Exchange Visitor Program. Check box if Exchange Visitor is accompanied by his immediate family members, enter number of dependents.

EXTEND AN ONGOING PROGRAM: Check this box for an Exchange Visitor who is continuing in the same Exchange Visitor Program.

TRANSFER TO A DIFFERENT PROGRAM: Check this box for an Exchange Visitor who is transferring from one Program Sponsor to another. Do not use for change of activity or subject under the same Exchange Visitor Program Number.

LOST FORM: Check this box when the form is being issued to replace a pink copy of the IAP-66 lost by the Exchange Visitor. Note the I-94 expiration date requirement in item 3.

VISITOR'S FAMILY TRAVEL: Check this box when the form is to be used by the Exchange Visitor's immediate family (indicate number of dependents) in order to travel separately from the Visitor. Note the I-94 expiration date requirement in block 3.

Block 1 Fill in the FAMILY NAME first. Use numerals for the BIRTH DATE, in the order Month, Day, Year, e.g., *07 22 39*. Province, prefecture, township, district, etc., may be used in place of CITY OF BIRTH where local custom or regulation requires, followed by COUNTRY OF BIRTH. LEGAL PERMANENT RESIDENT is a phrase used to distinguish country of intended permanent residence from country of birth and/or citizenship in those few cases where permanent residence and citizenship are different. In most cases, the country of citizenship and the country of permanent residence are the same. Exchange Visitors are subject to the Skills List and two-year foreign residence requirement in the country of permanent residence if that is different from the country of citizenship and/or birth. POSITION IN THAT COUNTRY is the position or location of the Exchange Visitor in the economy/society of his/her country of permanent residence prior to becoming an Exchange Visitor. U.S. ADDRESS: If the Visitor has a residence address in the U.S., use that address. If not, use the address of the institution where the Visitor will carry out his/her program or the address of the Program Sponsor.

Block 2 Write the PROGRAM SPONSOR'S NAME on the first line. The PROGRAM NUMBER consists of three parts, separated by dashes. The first is either "G" or "P", followed by a one-digit number (do not use Roman numerals), followed by a number from 1 to 4 digits. In the space below enter the entire PROGRAM DESCRIPTION as recorded by the United States Information Agency. This description may be pre-printed or entered with a rubber stamp if all copies are legible. Program number example: P-3-230.

Block 3 Enter the Dates of the Program covered by this IAP-66 (duration of acceptance). Use numerals for the date as you did for the date of birth.* The Immigration & Naturalization Service grants admission into, and extensions of stay in, the United States in periods of maxima. Although everyone will be admitted for "duration of status", each individual exchange visitor will have an IAP-66 form giving a period of acceptance indicating the period the Sponsoring organization is willing to accept the Exchange Visitor. Should the Exchange Visitor need to stay in the U.S. beyond that date a new IAP (checked to extend) would need to be issued by the sponsor indicating a further period of acceptance for the Exchange Visitor. If this form is for the Visitor's family travel or to replace a lost form enter the expiration date which appears on the Exchange Visitor's form I-94.

Block 4 Definitions of VISITOR CATEGORIES will be found in *Codes for Educational and Cultural Exchange*. Below the visitor category enter the SUBJECT/FIELD code which most closely describes the principal activity to be engaged in by the visitor. Finally, describe in your own words the activity which you have coded. Be specific in your descriptions.

Block 5 Indicate the total amount of FUNDS to be supplied by the various sources during the period of validity of this form. Do not make entries such as "$450 per month", rather enter the totals for the period. Any funds supplied to the exchange visitor by the program sponsor should be listed in the first line, even though the sponsor may belong to one of the categories listed in subsequent lines. If the sponsor commingles funds received from other sources and cannot identify specific amounts in an individual's program, enter all those funds in the first line. Then check the appropriate category below and enter "unknown" on the amount line for that category. See additional instructions in *Codes for Educational and Cultural Exchange*. (Pg. 6 block 5)

Block 6 Do not write in block 6.

Block 7 Fill in the name and business address of the OFFICIAL SIGNING THE FORM and the date of execution. That official must be the Responsible Officer or an Alternate Responsible Officer of the program described in block 2 above.

Block 8 The Responsible Officer or alternate should fill in this block to indicate approval of a transfer of an Exchange Visitor from his/her program to the program of another sponsor (i.e., to another program number).

The codes required to execute the IAP-66 will be found in the publication *Codes for Educational and Cultural Exchange*, which can be obtained from the Exchange Visitor Facilitative Staff, General Counsel, United States Information Agency, Washington, D.C. 20547.

*Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to M/ASP, U.S. Information Agency, 301 4th St., S.W., Washington, D.C. 20547, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

IAP-66 (12-90)

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OMB Approval No. 44-R1301

U.S. DEPARTMENT OF LABOR
Employment and Training Administration

APPLICATION FOR ALIEN EMPLOYMENT CERTIFICATION

IMPORTANT: READ CAREFULLY BEFORE COMPLETING THIS FORM

PRINT legibly in ink or use a typewriter. If you need more space to answer questions on this form, use a separate sheet. Identify each answer with the number of the corresponding question. SIGN AND DATE each sheet in original signature.

To knowingly furnish any false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another to do so is a felony punishable by $10,000 fine or 5 years in the penitentiary, or both (18 U.S.C. 1001).

PART A. OFFER OF EMPLOYMENT

1. Name of Alien *(Family name in capital letter, First, Middle, Maiden)*

2. Present Address of Alien *(Number, Street, City and Town, State ZIP Code or Province, Country)*

3. Type of Visa *(If in U.S.)*

The following information is submitted as evidence of an offer of employment.

4. Name of Employer *(Full name of organization)*

5. Telephone *(Area Code and Number)*

6. Address *(Number, Street, City or Town, Country, State, ZIP Code)*

7. Address Where Alien Will Work *(if different from item 6)*

8. Nature of Employer's Business Activity	9. Name of Job Title	10. Total Hours Per Week		11. Work Schedule *(Hourly)*	12. Rate of Pay	
		a. Basic	b. Overtime		a. Basic	b. Overtime
				a.m. p.m.	$. per	$ per hour

13. Describe Fully the Job to be Performed *(Duties)*

14. State in detail the MINIMUM education, training, and experience for a worker to perform satisfactorily the job duties described in Item 13 above.

EDU-CATION *(Enter number of years)*	Grade School	High School	College	College Degree Required *(specify)*	
				Major Field of Study	
TRAIN-ING	No. Yrs.		No. Mos.	Type of Training	
EXPERI-ENCE	Job Offered		Related Occupation		Related Occupation *(specify)*
	Number				
	Yrs.	Mos.	Yrs.	Mos.	

15. Other Special Requirements

16. Occupational Title of Person Who Will Be Alien's Immediate Supervisor ➤ ➤

17. Number of Employees Alien will Supervise ➤

◀ **ENDORSEMENTS** *(Make no entry in section - for government use only)*

Date Forms Received	
L.O.	S.O.
R.O.	N.O.
Ind. Code	Occ. Code
Occ. Title	

Replaces MA 7-50A, B and C (Apr. 1970 edition) which is obsolete.

ETA 750 (Oct. 1979)

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18. COMPLETE ITEMS ONLY IF JOB IS TEMPORARY			19. IF JOB IS UNIONIZED *(Complete)*	
a. No. of Openings To Be Filled By Aliens Under Job Offer	b. Exact Dates You Expect To Employ Alien		a. Number of Local	b. Name of Local
	From	To		c. City and State

20. STATEMENT FOR LIVE-AT-WORK JOB OFFERS *(Complete for Private Household Job ONLY)*						
a. Description of Residence		b. No. Persons Residing at Place of Employment				c. Will free board and private room not shared with any-one be provided?
("X" one) ☐ House ☐ Apartment	Number of Rooms	Adults		Children	Ages	*("X" one)* ☐ YES ☐ NO
			BOYS			
			GIRLS			

21. DESCRIBE EFFORTS TO RECRUIT U.S. WORKERS AND THE RESULTS. *(Specify Sources of Recruitment by Name)*

22. **Applications require various types of documentation. Please read PART II of the instructions to assure that appropriate supporting documentation is included with your application.**

23. EMPLOYER CERTIFICATIONS

By virtue of my signature below, I HEREBY CERTIFY the following conditions of employment.

a. I have enough funds available to pay the wage or salary offered the alien.

b. The wage offered equals or exceeds the prevailing wage and I guarantee that, if a labor certification is granted, the wage paid to the alien when the alien begins work will equal or exceed the prevailing wage which is applicable at the time the alien begins work.

c. The wage offered is not based on commissions, bonuses, or other incentives, unless I guarantee a wage paid on a weekly, bi-weekly or monthly basis.

d. I will be able to place the alien on the payroll on or before the date of the alien's proposed entrance into the United States.

e. The job opportunity does not involve unlawful discrimination by race, creed, color, national origin, age, sex, religion, handicap, or citizenship.

f. The job opportunity is not:

(1) Vacant because the former occupant is on strike or is being locked out in the course of a labor dispute involving a work stoppage.

(2) At issue in a labor dispute involving a work stoppage.

g. The job opportunity's terms, conditions and occupational environment are not contrary to Federal, State or local law.

h. The job opportunity has been and is clearly open to any qualified U.S. worker.

SAMPLE FORM

24. DECLARATIONS

DECLARATION OF EMPLOYER ➤ *Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury the foregoing is true and correct.*

SIGNATURE	DATE
NAME *(Type or Print)*	TITLE

AUTHORIZATION OF AGENT OF EMPLOYER ➤ *I HEREBY DESIGNATE the agent below to represent me for the purposes of labor certification and I TAKE FULL RESPONSIBILITY for accuracy of any representations made by my agent.*

SIGNATURE OF EMPLOYER	DATE
NAME OF AGENT *(Type or Print)*	ADDRESS OF AGENT *(Number, Street, City, State, ZIP Code)*

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PART B. STATEMENT OF QUALIFICATIONS OF ALIEN

FOR ADVICE CONCERNING REQUIREMENTS FOR ALIEN EMPLOYMENT CERTIFICATION: *If alien is in the U.S., contact nearest office of Immigration and Naturalization Service. If alien is outside U.S., contact nearest U.S. Consulate.*

IMPORTANT: READ ATTACHED INSTRUCTIONS BEFORE COMPLETING THIS FORM.

Print legibly in ink or use a typewriter. If you need more space to fully answer any questions on this form, use a separate sheet. Identify each answer with the number of the corresponding question. Sign and date each sheet.

1. Name of Alien *(Family name in capital letters)* | *First name* | *Middle name* | *Maiden name*

2. Present Address *(No., Street, City or Town, State or Province and ZIP Code* | *Country*

3. Type of Visa *(If in U.S.)*

4. Alien's Birthdate *(Month, Day, Year)*

5. Birthplace *(City or Town, State or Province)* | *Country*

6. Present Nationality or Citizenship *(Country)*

7. Address in United States Where Alien Will Reside

8. Name and Address of Prospective Employer if Alien has job offer in U.S.

9. Occupation in which Alien is Seeking Work

10. "X" the appropriate box below and furnish the information required for the box marked

a. ☐ Alien will apply for a visa abroad at the American Consulate in → | City in Foreign Country | Foreign Country

b. ☐ Alien is in the United States and will apply for adjustment of status to that of a lawful permanent resident in the office of the Immigration and Naturalization Service at → | City | State

SAMPLE FORM ETA 750

11. Names and Addresses of Schools, Colleges and Universities Attended *(Include trade or vocational training facilities)*	Field of Study	FROM		TO		Degrees or Certificates Received
		Month	Year	Month	Year	

SPECIAL QUALIFICATIONS AND SKILLS

12. Additional Qualifications and Skills Alien Possesses and Proficiency in the use of Tools, Machines or Equipment Which Would Help Establish if Alien Meets Requirements for Occupation in Item 9.

13. List Licenses *(Professional, journeyman, etc.)*

14. List Documents Attached Which are Submitted as Evidence that Alien Possesses the Education, Training, Experience, and Abilities Represented

Endorsements

(Make no entry in this section — FOR Government Agency USE ONLY)

DATE REC. DOL

O.T. & C.

(Items continued on next page)

15. WORK EXPERIENCE. *List all jobs held during past three (3) years. Also, list any other jobs related to the occupation for which the alien is seeking certification as indicated in item 9.*

a. NAME AND ADDRESS OF EMPLOYER			
NAME OF JOB	DATE STARTED *Month* *Year*	DATE LEFT *Month* *Year*	KIND OF BUSINESS
DESCRIBE IN DETAILS THE DUTIES PERFORMED, INCLUDING THE USE OF TOOLS, MACHINES, OR EQUIPMENT			NO. OF HOURS PER WEEK
b. NAME AND ADDRESS OF EMPLOYER			
NAME OF JOB	DATE STARTED *Month* *Year*	DATE LEFT *Month* *Year*	KIND OF BUSINESS
DESCRIBE IN DETAIL THE DUTIES PERFORMED, INCLUDING THE USE OF TOOLS, MACHINES, OR EQUIPMENT			NO. OF HOURS PER WEEK
c. NAME AND ADDRESS OF EMPLOYER			
NAME OF JOB	DATE STARTED *Month* *Year*	DATE LEFT *Month* *Year*	KIND OF BUSINESS
DESCRIBE IN DETAIL THE DUTIES PERFORMED, INCLUDING THE USE OF TOOLS, MACHINES, OR EQUIPMENT			NO. OF HOURS PER WEEK

SAMPLE FORM ETA 750

16. DECLARATIONS

DECLARATION OF ALIEN ➤➤	*Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury the foregoing is true and correct.*
SIGNATURE OF ALIEN	DATE
AUTHORIZATION OF AGENT OF ALIEN ➤➤	*I hereby designate the agent below to represent me for the purposes of labor certification and I take full responsibility for accuracy of any representations made by my agent.*
SIGNATURE OF ALIEN	DATE
NAME OF AGENT *(Type or print)*	ADDRESS OF AGENT *(No., Street, City, State, ZIP Code)*

Attestation by Employers For Off-Campus Work Authorization for F-1 Students

U.S. Department of Labor
Employment and Training Administration
U.S. Employment Service

OMB Approval No. 1205-0315
Expiration Date: 04/30/92

PART A: OFFER OF EMPLOYMENT

1. Employer (Full Legal Name of Employer)

2. Address (No., Street, City, State and ZIP Code)

3. Telephone Number (Area Code and Number)

4. Federal Employer I.D. Number

5. Occupational Information (Continue on reverse side if necessary)

a. Titles of Jobs to be Filled by F-1 Students	b. Two Digit Occupational Division	c. Rate of Pay	d. Location(s) Where Alien(s) Will Work (see instructions)
________	________	$ ________ per ________	________
________	________	$ ________ per ________	________
________	________	$ ________ per ________	________
________	________	$ ________ per ________	________

PART B: EMPLOYER ATTESTATIONS

6. Recruitment Attestation.

a. Recruitment for the position(s) identified in this attestation was conducted for 60 days, and a sufficient number of U.S. workers were not able, qualified and available for the position(s):

(i) A job order for the position(s) was on file for 60 consecutive days ending ______ (Date) with the ______________ (State Employment Service Name); and

(ii) A vacancy announcement(s) for the position(s) was posted at the place of employment for 60 consecutive days

b. Recruitment for the position(s) identified in this attestation will be conducted for each F-1 student hired more than 90 days after the end of the recruitment period referenced in Item 6 a. F-1 students will be hired only when recruitment did not result in a sufficient number of U.S. workers who were able, qualified and available.

(i) A job order will be on file with the local office of the State employment service indicated above until September 30, 1994; or

(ii) A job order will be on file with the local office of the State employment service indicated above for 60 consecutive days ending no more than 90 days before the date of hire and a vacancy announcement(s) will be posted at the place of employment for 60 consecutive days ending no more than 90 days before the date of hire.

7. Wage Attestation.

F-1 Students and other similarly situated workers will be paid the actual wage for the occupation at the place of employment or the prevailing wage level for the occupation in the area of employment, whichever is greater.

FORM ETA 9034

PART C: EMPLOYER DECLARATION

This attestation will be submitted to the educational institution either simultaneous to or after filing with the Department of Labor (DOL). In no case will this attestation be filed with an educational institution prior to or without filing with DOL.

Pursuant to 28 USC 1746, I declare under penalty of perjury the information provided on this form is true and correct. In addition, I declare that I will comply with DOL regulations governing this program and in particular, that I will make this attestation, supporting documentation, and other records, files and documents available to officials of DOL, upon such official request, during any investigation under this attestation or the Immigration and Nationality Act.

Name and Title of the Hiring Official ______________ Signature of the Hiring Official ______________ Date ________

FOR US GOVERNMENT USE ONLY: By virtue of my signature below, I acknowledge that this attestation is accepted for filing on and will be valid to September 30, 1994 unless the employer withdraws it or is disqualified from employing F-1 students by DOL. ________ Date

Signature of Authorized DOL Official ______________ ETA Case No. ________ Date ________

The Department of Labor is not the guarantor of the accuracy, truthfulness or adequacy of an attestation accepted for filing.

Public reporting burden for this collection of information is estimated to average 60 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N1301, 200 Constitution Avenue, N.W., Washington, D.C. 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1205-0315) Washington, D.C. 20503.

BEST COPY AVAILABLE

INSTRUCTIONS FOR COMPLETING FORM ETA 9034
ATTESTATION BY EMPLOYERS FOR OFF-CAMPUS WORK AUTHORIZATION FOR F-1 STUDENTS

IMPORTANT: READ CAREFULLY BEFORE COMPLETING THE FORM

Print legibly in ink or use a typewriter. Sign and date one form in original signature. Citations below to "regulation" are citations to identical provisions at 20 CFR 655, Subparts J and K, and 29 CFR Part 508, Subparts J and K.

Employers seeking to hire F-1 students for off-campus employment must submit the completed and dated original Form ETA-9034 (or a facsimile) and one copy of the completed original Form ETA-9034 to the Regional Certifying Officer in the Department of Labor (DOL), Employment and Training Administration (ETA) Regional Office having jurisdiction over the State in which the position is located, any time after the last date of recruitment, but no more than 60 days after the last day of recruitment. See § ____.930 for DOL Regional Office addresses.

Employers must also submit an attestation to the educational institution(s) at which the F-1 student(s) to be employed is enrolled in a full course of study. The attestation may be submitted simultaneously to DOL, and the educational institution; or it may be submitted first to DOL and subsequently to the educational institution, before an accepted copy is returned from DOL to the employer. In no case shall the attestation be submitted to the educational institution prior to or without submitting to DOL. See § ____.940 for detailed explanation.

To knowingly furnish any false information in the preparation of this form, or to aid, abet or counsel another to do so is a felony, punishable by $10,000 fine or five years in the penitentiary, or both (18 U.S.C. 1001). Other penalties apply as well to fraud and misuse of this immigration document (18 U.S.C. 1546) and to perjury with respect to this form (18 U.S.C. 1546 and 1621).

PART A: OFFER OF EMPLOYMENT

Item 1. Employer. Enter the full legal name of the business, firm, or organization, or, if an individual, enter name used for legal purposes on documents.

Item 2. Address. Self explanatory.

Item 3. Telephone Number. Self explanatory.

Item 4. Federal Employee I.D. Number. Enter the employer's Federal employer identification number assigned by the Internal Revenue Service.

Item 5(a). Titles of Jobs to be Filled by F-1 Students. Enter the common name(s) or payroll title(s) of the job(s) being offered.

Item 5(b). Two digit occupational division. Enter the two digit code which most closely describes the job(s) to be performed.

Item 5(c). Rate of Pay. Enter the salary to be paid in terms of the amount per hour, week, year, etc.

Item 5(d). Location(s) Where Alien(s) Will Work. Enter the full address of the site or location where the work will actually be performed, if different from the address in item 2.

PART B: EMPLOYER ATTESTATIONS

Item 6. Recruitment attestation. Employers must attest that they have recruited for the position for 60 days, and that a sufficient number of U.S. workers were not able, qualified and available. To satisfy this requirement employers must: 1. place a job order for 60 consecutive days with the local office of the State employment service in the area of intended employment; and 2. post a vacancy announcement at the place of business.

Employers must also attest that for an F-1 student(s) hired more than 90 days after the end of the 60 day recruitment referenced above, subsequent recruitment will be conducted prior to hiring each student(s). To satisfy this attestation employers must either; 1. place an open job order for the position(s) with the local office of the Statement employment service in the intended area of employment until September 30, 1994; or, 2. place a job order with the local office of the State employment service in the area of intended employment for 60 consecutive days, and post an announcement of the job vacancy for 60 consecutive days, at the employer's place of business. The 60-day job order and the 60-day posting of the job vacancy shall not end more than 90 days before the date of hire.

Item 7. Wage attestation. Employers must attest that they will pay the F-1 student(s) and any other similarly situated worker(s) the actual wage for the occupation at the place of employment or the prevailing wage for the occupation in the intended area of employment, whichever is higher. The employer shall update the prevailing wage for the occupation named in the attestation on an annual basis and shall continue paying the actual wage or the prevailing wage for the entire validity period of the attestation.

The prevailing wage rate for positions named in the attestation, unless subject to the Davis-Bacon Act or the McNamara-O'Hara Service Contract Act, is the average rate of wages paid to workers similarly employed in the area of intended employment as determined by a prevailing wage survey published by an independent authoritative source or a prevailing wage finding from the State Employment Service in the intended area of employment.

Employers should be prepared to produce documentary evidence in support of the employer attestations for at least 18 months from the closing date of the recruitment period to which the documentation is applicable, and make it available to officials of DOL upon such officials' request. See Appendix A to subpart J for guidance on the documentation to support these attestations.

PART C: EMPLOYER DECLARATION

By signing this form, the hiring official is attesting to: the accuracy of the information on the form, and having complied with the conditions of PART B: EMPLOYER ATTESTATIONS. False statements are subject to Federal criminal penalties, as stated above. If the Secretary of Labor determines that an employer has provided an attestation that is materially false or has failed to pay wages in accordance with the attestation, after notice and an opportunity for a hearing, the employer shall be disqualified from employing an F-1 student.

The Department of Labor will accept this attestation upon receipt from the employer. The employer may submit it to the educational institution, without indication of Department of Labor acceptance, for off-campus work authorization for F-1 students. A copy of the attestation form indicating the Department's acceptance, or notification of nonacceptance will be returned to the employer. Within 15 days thereafter, the employer must provide the educational institution with a copy of the attestation accepted by the Department of Labor as indicated thereon. Failure to provide a copy of the accepted attestation to the educational institution shall result in notification to the U.S. Attorney General that the employer does not have a valid attestation on file with the Department of Labor.

TWO-DIGIT OCCUPATIONAL DIVISIONS

PROFESSIONAL, TECHNICAL, AND MANAGERIAL OCCUPATIONS

00/01	OCCUPATIONS IN ARCHITECTURE, ENGINEERING AND SURVEYING
02	OCCUPATIONS IN MATHEMATICS AND PHYSICAL SCIENCES
03	COMPUTER-RELATED OCCUPATIONS
04	OCCUPATIONS IN LIFE SCIENCES
05	OCCUPATIONS IN SOCIAL SCIENCES
07	OCCUPATIONS IN MEDICINE AND HEALTH
09	OCCUPATIONS IN EDUCATION
10	OCCUPATIONS IN MUSEUM, LIBRARY, AND ARCHIVAL SCIENCES
11	OCCUPATIONS IN LAW AND JURISPRUDENCE
12	OCCUPATIONS IN RELIGION AND THEOLOGY
13	OCCUPATIONS IN WRITING
14	OCCUPATIONS IN ART
15	OCCUPATIONS IN ENTERTAINMENT AND RECREATION
16	OCCUPATIONS ADMINISTRATIVE SPECIALIZATIONS
18	MANAGERS AND OFFICIALS
19	MISCELLANEOUS PROFESSIONAL, TECHNICAL, AND MANAGERIAL OCCUPATIONS

CLERICAL AND SALES OCCUPATIONS

20	STENOGRAPHY, TYPING, FILING AND RELATED OCCUPATIONS
21	COMPUTING AND ACCOUNT-RECORDING OCCUPATIONS
22	PRODUCTION AND STOCK CLERKS AND RELATED OCCUPATIONS
23	INFORMATION AND MESSAGE DISTRIBUTION OCCUPATIONS
24	MISCELLANEOUS CLERICAL OCCUPATIONS
25	SALES OCCUPATIONS, SERVICES
26	SALES OCCUPATIONS, CONSUMABLE COMMODITIES
27	SALES OCCUPATIONS, OTHER COMMODITIES
29	MISCELLANEOUS SALES OCCUPATIONS

SAMPLE FORM ETA-9034

SERVICE OCCUPATIONS

30	DOMESTIC SERVICE OCCUPATIONS
31	FOOD AND BEVERAGE PREPARATION AND SERVICE OCCUPATIONS
32	LODGING AND RELATED SERVICE OCCUPATIONS
33	BARBERING, COSMETOLOGY, AND RELATED SERVICE OCCUPATIONS
34	AMUSEMENT AND RECREATION SERVICE OCCUPATIONS
35	MISCELLANEOUS PERSONAL SERVICE OCCUPATIONS
36	APPAREL AND FURNISHINGS SERVICE OCCUPATIONS
37	PROTECTIVE SERVICE OCCUPATIONS
38	BUILDING AND RELATED SERVICE OCCUPATIONS

AGRICULTURAL, FISHERY, FORESTRY, AND RELATED OCCUPATIONS

40	PLANT FARMING OCCUPATIONS
41	ANIMAL FARMING OCCUPATIONS
42	MISCELLANEOUS AGRICULTURAL AND RELATED OCCUPATIONS
44	FISHERY AND RELATED OCCUPATIONS
45	FORESTRY OCCUPATIONS
46	HUNTING, TRAPPING AND RELATED OCCUPATIONS

PROCESSING OCCUPATIONS

50	OCCUPATIONS IN PROCESSING OF METAL
51	ORE REFINING AND FOUNDRY OCCUPATIONS
52	OCCUPATIONS IN PROCESSING OF FOOD, TOBACCO, AND RELATED PRODUCTS

53	OCCUPATIONS IN PROCESSING OF PAPER AND RELATED MATERIALS
54	OCCUPATIONS IN PROCESSING OF PETROLEUM, COAL, NATURAL AND MANUFACTURED GAS AND RELATED PRODUCTS
55	OCCUPATIONS IN PROCESSING OF RUBBER, PAINT AND RELATED PRODUCTS
56	OCCUPATIONS IN PROCESSING OF WOOD AND WOOD PRODUCTS
57	OCCUPATIONS IN PROCESSING OF STONE, CLAY, GLASS AND RELATED PRODUCTS
58	OCCUPATIONS IN PROCESSING OF LEATHER, TEXTILES AND RELATED PRODUCTS
59	OTHER PROCESSING OCCUPATIONS

MACHINE TRADES OCCUPATIONS

60	METAL MACHINING OCCUPATIONS
61	OTHER METALWORKING OCCUPATIONS
62/63	MECHANICS AND MACHINERY REPAIRERS
64	PAPERWORKING OCCUPATIONS
65	PRINTING OCCUPATIONS
66	WOOD MACHINING OCCUPATIONS
67	OCCUPATIONS IN MACHINING STONE, CLAY, GLASS, AND RELATED MATERIALS
68	TEXTILE OCCUPATIONS
69	OTHER MACHINE TRADES OCCUPATIONS

BENCHWORK OCCUPATIONS

70	OCCUPATIONS IN FABRICATION, ASSEMBLY, AND REPAIR OF METAL PRODUCTS
71	OCCUPATIONS IN FABRICATION AND REPAIR OF SCIENTIFIC, MEDICAL, PHOTOGRAPHIC, OPTICAL HOROLOGICAL, AND RELATED PRODUCTS
72	OCCUPATIONS IN ASSEMBLY AND REPAIR OF ELECTRICAL EQUIPMENT
73	OCCUPATIONS IN FABRICATION AND REPAIR OF PRODUCTS MADE FROM ASSORTED MATERIALS
74	PAINTING, DECORATING, AND RELATED OCCUPATIONS
75	OCCUPATIONS IN FABRICATION AND REPAIR OF PLASTICS, SYNTHETICS, RUBBER, AND RELATED PRODUCTS
76	OCCUPATIONS IN FABRICATION AND REPAIR OF WOOD PRODUCTS
77	OCCUPATIONS IN FABRICATION AND REPAIR OF SAND, STONE, CLAY, AND GLASS PRODUCTS
78	OCCUPATIONS IN FABRICATION AND REPAIR OF TEXTILE, LEATHER, AND RELATED PRODUCTS
79	OTHER BENCHWORK OCCUPATIONS

STRUCTURAL WORK OCCUPATIONS

80	OTHER OCCUPATIONS IN METAL FABRICATING
81	WELDERS, CUTTERS AND RELATED OCCUPATIONS
82	ELECTRICAL ASSEMBLING, INSTALLING, AND REPAIRING OCCUPATIONS
84	PAINTING, PLASTERING, WATERPROOFING, CEMENTING, AND RELATED OCCUPATIONS
85	EXCAVATING, GRADING, PAVING, AND RELATED OCCUPATIONS
86	OTHER CONSTRUCTION OCCUPATIONS
89	OTHER STRUCTURAL WORK OCCUPATIONS

MISCELLANEOUS OCCUPATIONS

90	MOTOR FREIGHT OCCUPATIONS
91	OTHER TRANSPORTATION OCCUPATIONS
92	PACKAGING AND MATERIALS HANDLING OCCUPATIONS
93	OCCUPATIONS IN EXTRACTION OF MINERALS
95	OCCUPATIONS IN PRODUCTION AND DISTRIBUTION OF UTILITIES
96	OTHER AMUSEMENT, RECREATION, MOTION PICTURE, RADIO AND TELEVISION OCCUPATIONS
97	OCCUPATIONS IN GRAPHIC ART WORK

[FR Doc. 91-26382 Filed 11-05-91; 8:45 am]

BILLING CODES 4510-10-C, 4510-27-C

Labor Condition Application for H-1B Nonimmigrants

U.S. Department of Labor
Employment and Training Administration
U.S. Employment Service

OMB Approval No.: 1205-0310
Expiration Date: 10/31/92

1. Full Legal Name of Employer

2. Federal Employer I.D. Number

3. Telephone No. (   )

4. FAX No. (   )

5. Employer's Address (No., Street, City, State, and ZIP Code)

6. Address Where Documentation is Kept (If different than item 5)

7. OCCUPATIONAL INFORMATION (Use attachment if additional space is needed)

(a) Three-Digit Occupational Groups Code	(b) Job Title (Check box if position is part-time)	(c) No. of H-1B Nonimmigrants	(d) Rate of Pay	(e) Period of Employment From	To	(f) Location(s) Where H-1B Nonimmigrants Will Work (see instructions)
	☐					
	☐					
	☐					
	☐					

8. EMPLOYER LABOR CONDITION STATEMENTS (Employers are required to develop and maintain documentation supporting labor condition statements 8(a) and 8(d). Employers are further required to make available for public examination a copy of the labor condition application and necessary supporting documentation within one (1) working day after the date on which the application is filed with DOL. Check each box to indicate that the employer will comply with each statement.)

☐ (a) H-1B nonimmigrants will be paid at least the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for the occupation in the area of employment, whichever is higher.

☐ (b) The employment of H-1B nonimmigrants will not adversely affect the working conditions of workers similarly employed in the area of intended employment.

☐ (c) On the date this application is signed and submitted, there is not a strike, lockout or work stoppage in the course of a labor dispute in the occupation in which H-1B nonimmigrants will be employed at the place of employment.

☐ (d) As of this date, notice of this application has been provided to workers employed in the occupations in which H-1B nonimmigrants will be employed: (check appropriate box)

  ☐ (i) Notice of this filing has been provided to the bargaining representative of workers in the occupations in which H-1B nonimmigrants will be employed; or

  ☐ (ii) There is no such bargaining representative; therefore, a notice of this filing has been posted and was, or will remain, posted for 10 days in a conspicuous place where H-1B nonimmigrants will be employed.

9. DECLARATION OF EMPLOYER. Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the information provided on this form is true and correct. In addition, I declare that I will comply with the Department of Labor regulations governing this program and, in particular, that I will make this application, supporting documentation, and other records, files and documents available to officials of the Department of Labor, upon such official's request, during any investigation under this application or the Immigration and Nationality Act.

Name and Title of Hiring or Other Designated Official ______ Signature ______ Date ______

AN APPLICATION CERTIFIED BY DOL MUST BE FILED IN SUPPORT OF AN H-1B VISA PETITION WITH THE INS.

FOR U.S. GOVERNMENT AGENCY USE ONLY: By virtue of my signature below, I acknowledge that this application is hereby certified and will be valid from ______ through ______.

Signature and Title of Authorized DOL Official ______ ETA Case No. ______

Subsequent DOL Action: Suspended ______ (date) Invalidated ______ (date) Withdrawn ______ (date)

The Department of Labor is not the guarantor of the accuracy, truthfulness or adequacy of a certified labor condition application.

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of IRM Policy, Department of Labor, Room N-1301, 200 Constitution Avenue, N.W., Washington, DC 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1205-0310), Washington, DC 20503.

DO NOT SEND THE COMPLETED FORM TO EITHER OF THESE OFFICES

ETA 9035 (Jan. 1992)

SAMPLE FORM ETA 9035

INSTRUCTIONS FOR COMPLETING FORM ETA 9035
LABOR CONDITION APPLICATION FOR
H-1B NONIMMIGRANTS

IMPORTANT: READ CAREFULLY BEFORE COMPLETING FORM

Print legibly in ink or use a typewriter. Sign and date one form in original signature. Citations below to "regulations" are citations to identical provisions at 20 CFR 655, Subparts H and I, and to 29 CFR 507, Subparts H and I.

To knowingly furnish any false information in the preparation of this form and any supporting documentation thereto, or to aid, abet or counsel another to do so is a felony, punishable by $10,000 fine or five years in the penitentiary, or both (18 U.S.C. 1001). Other penalties apply as well to fraud or misuse of this immigration document (U.S.C. 1546) and to perjury with respect to this form (18 U.S.C. 1546 and 1621).

Employers seeking to hire H-1B nonimmigrants in specialty occupations or as fashion models of distinguished merit and ability must submit the completed and dated original Form ETA 9035 (or a facsimile) and one copy of the completed original Form ETA 9035 to the Regional Certifying Officer in the Department of Labor (DOL), Employment and Training Administration (ETA) Regional Office having jurisdiction over the State in which the position is located. See 20 CFR 655.720 for ETA Regional Office addresses. An application which is complete and has no obvious inaccuracies will be certified by DOL and returned to the employer, who may then file it in support of its petition with the INS.

Item 1. Full Legal Name of Employer. Enter full legal name of business, firm or organization, or, if an individual, enter name used for legal purposes on documents.

Item 2. Federal Employer I.D. Number. Enter employer's Federal Employer Identification Number (EIN) assigned by the Internal Revenue Service.

Item 3. Telephone. Self-explanatory.

Item 4. FAX No. Self-explanatory.

Item 5. Employer's Address. Self-explanatory.

Item 6. Address Where Documentation is Kept. (If different than item 5). Self-explanatory.

Item 7. Occupational Information. Enter the information requested under the appropriate subheading. If necessary, continue on an attachment.

Item 7(a). Three Digit Occupational Groups Code. Enter the three-digit code which most closely describes the job(s) to be performed. (DOL purposes only.)

Item 7(b). Job Title. Enter the common name(s) or payroll title(s) of the job(s) being offered. Check box to the right of the blank if position is part-time.

Item 7(c). Number of Nonimmigrants. Enter the number of H-1B nonimmigrants that will be hired in the three-digit occupational code stated in item 7(a).

Item 7(d). Rate of Pay. Enter the salary to be paid in terms of the amount per hour, week, year, etc. If a wage range is listed for this item, the salary for each H-1B nonimmigrant shall be maintained in support of the application.

Item 7(e). Period of Employment. Enter the starting and ending dates during which the H-1B nonimmigrants will be employed.

Item 7(f). Location(s) Where H-1B Nonimmigrants Will Work. Enter the city and state of site or location where the work will actually be performed.

Item 8. Employer Labor Condition Statements. The employer must attest by checking off the conditions listed in (a) through (d) and by signing the application form. Employers must develop and maintain documentation to support labor condition statements 8(a) and 8(d). Documentation in support of a labor condition application shall be retained at the employer's place of business or worksite and made available to DOL upon such official's request. See 20 CFR 655.730 for guidance on the documentation that must support each labor condition statement.

Item 8(a). The employer must attest that H-1B nonimmigrants will be paid wages which are at least the higher of the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for the occupational classification in the area of employment.

Item 8(b). The employer must attest that the employment of H-1B nonimmigrants in the occupations named will not adversely affect the working conditions of workers similarly employed in the occupational classification.

Item 8(c). The employer must attest that on the date the application is signed and submitted, there is not a strike, lockout or work stoppage in the course of a labor dispute in the named occupations at the worksite.

Item 8(d). The employer must attest that as of the date of filing, notice of the labor condition application has been provided to workers employed in the named occupations. The application may be provided to the workers through the bargaining representative, or where there is no such bargaining representative, notice of the filing must be posted in a conspicuous place where H-1B nonimmigrants will be employed.

Item 9. Declaration of Employer. One copy of this form must bear the original signature of the employer. By signing this form, the employer is attesting to the accuracy of the labor condition statements listed in items 8(a) through (d) and to compliance with these conditions. False statements are subject to Federal criminal penalties, as stated above. Failure to meet a condition of the application regarding strikes or lockouts, substantial failure to meet a condition of the application regarding notification of the bargaining unit representative or employees, willful failure to meet a condition of the application regarding wages or working conditions, or misrepresentation of a material fact may result in additional penalties.

SAMPLE FORM ETA 9035

BILLING CODE 4510-30-C; 4510-27-C

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Appendix 2 (Not to be Codified in the CFR): DOT Three-Digit Occupational Groups Codes for Professional, Technical and Managerial Occupations and Fashion Models. Printed below is a copy of DOT Three-Digit Occupational Groups Codes for Professional, Technical and Managerial Occupations and Fashion Models.

BILLING CODE 4510-30-M; 4510-27-M

THREE-DIGIT OCCUPATIONAL GROUPS

PROFESSIONAL, TECHNICAL AND MANAGERIAL OCCUPATIONS AND FASHION MODELS

SAMPLE FORM TA 9035

OCCUPATIONS IN ARCHITECTURE, ENGINEERING AND SURVEYING

001	ARCHITECTURAL OCCUPATIONS
002	AERONAUTICAL ENGINEERING OCCUPATIONS
003	ELECTRICAL/ELECTRONIC ENGINEERING OCCUPATIONS
005	CIVIL ENGINEERING OCCUPATIONS
006	CERAMIC ENGINEERING OCCUPATIONS
007	MECHANICAL ENGINEERING OCCUPATIONS
008	CHEMICAL ENGINEERING OCCUPATIONS
010	MINING AND PETROLEUM ENGINEERING OCCUPATIONS
011	METALLURGY AND METALLURGICAL ENGINEERING OCCUPATIONS
012	INDUSTRIAL ENGINEERING OCCUPATIONS
013	AGRICULTURAL ENGINEERING OCCUPATIONS
014	MARINE ENGINEERING OCCUPATIONS
015	NUCLEAR ENGINEERING OCCUPATIONS
019	OTHER OCCUPATIONS IN ARCHITECTURE, ENGINEERING AND SURVEYING

OCCUPATIONS IN MATHEMATICS AND PHYSICAL SCIENCES

020	OCCUPATIONS IN MATHEMATICS
021	OCCUPATIONS IN ASTRONOMY
022	OCCUPATIONS IN CHEMISTRY
023	OCCUPATIONS IN PHYSICS
024	OCCUPATIONS IN GEOLOGY
025	OCCUPATIONS IN METEOROLOGY
029	OTHER OCCUPATIONS IN MATHEMATICS AND PHYSICAL SCIENCES

COMPUTER-RELATED OCCUPATIONS

030	OCCUPATIONS IN SYSTEMS ANALYSIS AND PROGRAMMING
031	OCCUPATIONS IN DATA COMMUNICATIONS AND NETWORKS
032	OCCUPATIONS IN COMPUTER SYSTEM USER SUPPORT
033	OCCUPATIONS IN COMPUTER SYSTEMS TECHNICAL SUPPORT
039	OTHER COMPUTER-RELATED OCCUPATIONS

OCCUPATIONS IN LIFE SCIENCES

040	OCCUPATIONS IN AGRICULTURAL SCIENCES
041	OCCUPATIONS IN BIOLOGICAL SCIENCES
045	OCCUPATIONS IN PSYCHOLOGY
049	OTHER OCCUPATIONS IN LIFE SCIENCES

OCCUPATIONS IN SOCIAL SCIENCES

050	OCCUPATIONS IN ECONOMICS
051	OCCUPATIONS IN POLITICAL SCIENCE
052	OCCUPATIONS IN SOCIOLOGY
055	OCCUPATIONS IN ANTHROPOLOGY
059	OTHER OCCUPATIONS IN SOCIAL SCIENCES

OCCUPATIONS IN MEDICINE AND HEALTH

070	PHYSICIANS AND SURGEONS
071	OSTEOPATHS
072	DENTISTS
073	VETERINARIANS
074	PHARMACISTS
076	THERAPISTS
077	DIETITIANS
078	OCCUPATIONS IN MEDICAL AND DENTAL TECHNOLOGY
079	OTHER OCCUPATIONS IN MEDICINE AND HEALTH

OCCUPATIONS IN EDUCATION

090	OCCUPATIONS IN COLLEGE AND UNIVERSITY EDUCATION
091	OCCUPATIONS IN SECONDARY SCHOOL EDUCATION
092	OCCUPATIONS IN PRESCHOOL, PRIMARY SCHOOL, AND KINDERGARTEN EDUCATION
094	OCCUPATIONS IN EDUCATION OF PERSONS WITH DISABILITIES
096	HOME ECONOMISTS AND FARM ADVISERS
097	OCCUPATIONS IN VOCATIONAL EDUCATION
099	OTHER OCCUPATIONS IN EDUCATION

OCCUPATIONS IN MUSEUM, LIBRARY, AND ARCHIVAL SCIENCES

100	LIBRARIANS
101	ARCHIVISTS
102	MUSEUM CURATORS AND RELATED OCCUPATIONS
109	OTHER OCCUPATIONS IN MUSEUM, LIBRARY AND ARCHIVAL SCIENCES

OCCUPATIONS IN LAW AND JURISPRUDENCE

110	LAWYERS
111	JUDGES
119	OTHER OCCUPATIONS IN LAW AND JURISPRUDENCE

OCCUPATIONS IN RELIGION AND THEOLOGY

120	CLERGY
129	OTHER OCCUPATIONS IN RELIGION AND THEOLOGY

OCCUPATIONS IN WRITING

131	WRITERS
132	EDITORS, PUBLICATION, BROADCAST, AND SCRIPT
139	OTHER OCCUPATIONS IN WRITING

OCCUPATIONS IN ART

142	ENVIRONMENTAL, PRODUCT AND RELATED DESIGNERS
149	OTHER OCCUPATIONS IN ART

OCCUPATIONS IN ENTERTAINMENT AND RECREATION

152	OCCUPATIONS IN MUSIC
159	OTHER OCCUPATIONS IN ENTERTAINMENT AND RECREATION

OCCUPATIONS ADMINISTRATIVE SPECIALIZATIONS

160	ACCOUNTANTS, AUDITORS, AND RELATED OCCUPATIONS
161	BUDGET AND MANAGEMENT SYSTEMS ANALYSIS OCCUPATIONS
164	ADVERTISING MANAGEMENT OCCUPATIONS
165	PUBLIC RELATIONS MANAGEMENT OCCUPATIONS
166	PERSONNEL MANAGEMENT OCCUPATIONS
169	OTHER OCCUPATIONS IN ADMINISTRATIVE SPECIALIZATIONS

MANAGERS AND OFFICIALS

180	AGRICULTURE, FORESTRY, AND FISHING INDUSTRY MANAGERS AND OFFICIALS
181	MINING INDUSTRY MANAGERS AND OFFICIALS
182	CONSTRUCTION INDUSTRY MANAGERS AND OFFICIALS
183	MANUFACTURING INDUSTRY MANAGERS AND OFFICIALS
184	TRANSPORTATION, COMMUNICATION, AND UTILITIES INDUSTRY MANAGERS AND OFFICIALS
185	WHOLESALE AND RETAIL TRADE MANAGERS AND OFFICIALS
186	FINANCE, INSURANCE AND REAL ESTATE MANAGERS AND OFFICIALS
187	SERVICE INDUSTRY MANAGERS AND OFFICIALS
188	PUBLIC ADMINISTRATION MANAGERS AND OFFICIALS
189	MISCELLANEOUS MANAGERS AND OFFICIALS

MISCELLANEOUS PROFESSIONAL, TECHNICAL, AND MANAGERIAL OCCUPATIONS

195	OCCUPATIONS IN SOCIAL AND WELFARE WORK
199	MISCELLANEOUS PROFESSIONAL, TECHNICAL AND MANAGERIAL OCCUPATIONS

SALES PROMOTION OCCUPATIONS

297	FASHION MODELS

[FR Doc. 92–693 Filed 1–10–92; 8:45 am]

BILLING CODE 4510-30-C; 4510-27-C

221

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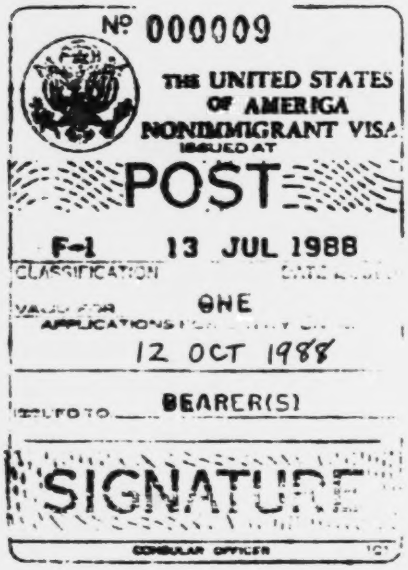
APPENDIX 4

Visa Stamp and Visa Label



Nº 000009

THE UNITED STATES OF AMERICA NONIMMIGRANT VISA

ISSUED AT

POST

F-1 13 JUL 1988

CLASSIFICATION DATE ISSUED

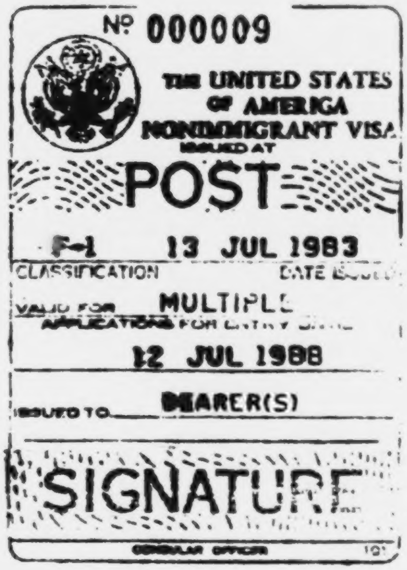
VALID FOR ONE APPLICATIONS FOR ENTRY UNTIL

12 OCT 1988

ISSUED TO BEARER(S)

SIGNATURE

CONSULAR OFFICER 101



Nº 000009

THE UNITED STATES OF AMERICA NONIMMIGRANT VISA

ISSUED AT

POST

F-1 13 JUL 1988

CLASSIFICATION DATE ISSUED

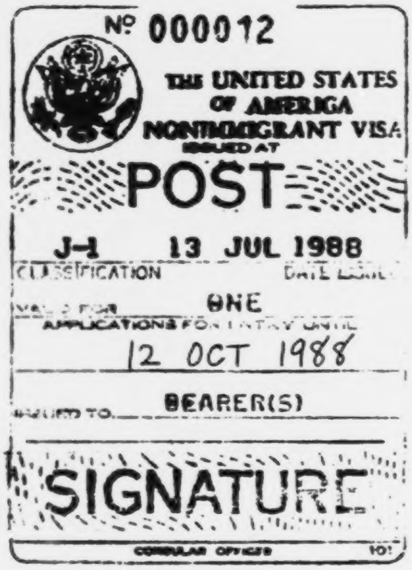
VALID FOR MULTIPLE APPLICATIONS FOR ENTRY UNTIL

12 JUL 1988

ISSUED TO BEARER(S)

SIGNATURE

CONSULAR OFFICER 101



Nº 000012

THE UNITED STATES OF AMERICA NONIMMIGRANT VISA

ISSUED AT

POST

J-1 13 JUL 1988

CLASSIFICATION DATE ISSUED

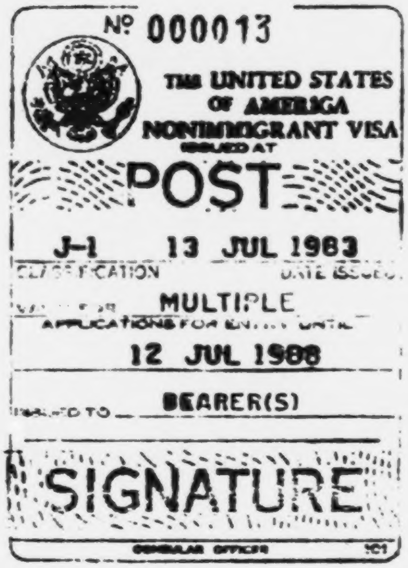
VALID FOR ONE APPLICATIONS FOR ENTRY UNTIL

12 OCT 1988

ISSUED TO BEARER(S)

SIGNATURE

CONSULAR OFFICER 101



Nº 000013

THE UNITED STATES OF AMERICA NONIMMIGRANT VISA

ISSUED AT

POST

J-1 13 JUL 1988

CLASSIFICATION DATE ISSUED

VALID FOR MULTIPLE APPLICATIONS FOR ENTRY UNTIL

12 JUL 1988

ISSUED TO BEARER(S)

SIGNATURE

CONSULAR OFFICER 101

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APPENDIX 5

Regional and District INS Offices

Regional Service Centers

Northern Service Center
P.O. Box 82521
Lincoln, NE 68501-2521
(402) 437-5218

Eastern Service Center
75 Lower Welden St.
St. Albans, VT 05479-0001
(802) 527-3160

Southern Service Center
P.O. Box 152122, Dept. A
Irving, TX 75015-2122
(214) 767-7769

Western Service Center
P.O. Box 30111
Laguna Niguel, CA 92667-8111
(714) 643-4880

Northern Region

Northern Region
Fort Snelling
Federal Building, Room 480
Twin Cities, MN 55111
(612) 725-3850

Anchorage District
222 West 7th Avenue #16
Room 233
Anchorage, AK 99513-7851
(907) 271-3521

Fairbanks Suboffice
P.O. Box 60208
Fairbanks, AK 99706
(907) 474-0307
(accepts papers for filing only)

Chicago District
10 West Jackson Blvd
Chicago, IL 60604
(312) 353-7300

Indiana Suboffice
46 E. Ohio Street
Room 124
Indianapolis, IN 46204
(317) 226-6009

Wisconsin Suboffice
Federal Building
Room 186
517 E. Wisconsin Avenue
Milwaukee, WI 53202
(414) 297-3572

Cleveland District
1240 E. 9th St.
Room 1917
Cleveland, OH 44199
(216) 522-4766

Cincinnati Suboffice
US Post Office and Courthouse
5th and Walnut St.
P.O. Box 537
Cincinnati, OH 45201
(513) 287-6080

Denver District
4730 Paris St.
Denver, CO 80209
(303) 371-0135

Salt Lake City Suboffice
125 South State St.
Room 4103
Salt Lake City, UT 84138
(801) 524-5771

Detroit District
333 Mt. Elliott St.
Federal Building
Detroit, MI 48207
(313) 226-3250

Helena District
301 S. Park
Room 512, Drawer 10036
Helena, MT 59626
(406) 449-5220

Idaho Suboffice
4620 Overland Road
Boise, ID 83705
(208) 334-1821

Kansas City District
9747 North Conant Ave.
Kansas City, MO 64153
(816) 891-9312

St. Louis Suboffice
1114 Market St.
St. Louis, MO 63101
(314) 539-2532

Omaha District
3736 South 132nd St.
Omaha, NE 68144
(402) 697-9152

Portland District
511 N.W. Broadway
Federal Building
Portland, OR 97209
(503) 326-2155

St. Paul District
2901 Metro Drive
Bloomington, MN 55425
(612) 335-2211

Seattle District
815 Airport Way, South
Seattle, WA 98134
(206) 553-0070

Spokane Suboffice
691 United States Courthouse
Spokane, WA 99201
(509) 353-2758

Eastern Region

Eastern Region
70 Kimball Ave.
South Burlington, VT 05403-6813
(802) 660-5000

Baltimore District
101 West Lombard St.
Baltimore, MD 21201
(301) 962-2010

Boston District
JFK Federal Building
Government Center, Room 700
Boston, MA 02203
(617) 565-4943

Hartford Suboffice
900 Asylum Ave.
Hartford, CT 06105
(203) 240-3171

Buffalo District
68 Court St.
Buffalo, NY 14202
(716) 846-4741

Albany Suboffice
445 Broadway
Room 220
Albany, NY 12207
(518) 472-4621

Newark District
970 Broad St.
Federal Building
Newark, NJ 07102
(201) 645-2269

New York District
26 Federal Plaza
New York, NY 10278
(212) 264-5942

Philadelphia District
1600 Callowhill St.
Philadelphia, PA 19130
(215) 597-7305

Pittsburgh Suboffice
Room 2130 Federal Building
1000 Liberty Ave.
Pittsburgh, PA 15222
(412) 644-3356

Portland District
739 Warren Ave.
Portland, ME 04103
(207) 780-3399

Vermont Suboffice
Federal Bldg.
P.O. Box 328
St. Albans, VT 05478
(802) 951-6658

San Juan District
Carlos Chardon St.
3rd Floor
Hato Rey, PR 00918
(809) 766-5380

St. Croix Suboffice
P.O. Box 1270
Kingshill
Christian Sted
St. Croix, VI 00850
(809) 778-6559

St. Thomas Suboffice
Federal Building
Veterans Drive
P.O. Box 610
Charlotte Amalie
St. Thomas, VI 00804
(809) 774-1390

Washington, D.C., District
4420 North Fairfax Dr.
Arlington, VA 22203
(202) 307-1640

Norfolk Suboffice
200 Granby Mall
Federal Building
Norfolk, VA 23510
(804) 441-3081

Southern Region

Southern Region
7701 North Stemmons Freeway
Dallas, TX 75247
(214) 767-7011

Atlanta District
77 Forsyth St., SW
Room G-85
Atlanta, GA 30303
(404) 331-2788

Charlotte Suboffice
6 Woodlawn Green
Suite 138
Charlotte, NC 28210
(704) 523-1704

South Carolina Suboffice
Federal Building
334 Meeting Street
Room 110
Charleston, SC 29403
(803) 727-4350

Dallas District
8101 North Stemmons Freeway
Dallas, TX 75247
(214) 655-3011

Oklahoma City Suboffice
West Park Business Center
4149 Highline Blvd.
Suite 300
Oklahoma City, OK 73108
(405) 942-8670

El Paso District
700 E. San Antonio
P.O. Box 9398-79984
El Paso, TX 79901
(915) 534-6334

Albuquerque Suboffice
500 Gold Ave., SW
Room 3303
Albuquerque, NM 87103
(505) 766-6366

Harlingen District
2102 Teege Rd.
Harlingen, TX 78550
(512) 427-8592

Houston District
509 North Belt
Houston, TX 77060
(713) 847-7950
Miami District
7880 Biscayne Blvd.
Miami, FL 33138
(305) 530-7657

Jacksonville Suboffice
400 West Bay Street
Room G-18
Jacksonville, FL 32202
(904) 791-2625

Tampa Suboffice
5509 W. Gray Street
Room 113
Tampa, FL 33609-1059
(813) 228-2131

New Orleans District
701 Loyola Ave.
Room T-8005
New Orleans, LA 70113
(504) 589-6521

Louisville Suboffice
US Courthouse
Room 601
Louisville, KY 40202
(502) 582-6395

Memphis Suboffice
Room 814
Federal Office Building
167 West Main St.
Memphis, TN 38103
(901) 544-3301

San Antonio District
727 E. Durango
Suite A301
San Antonio, TX 78206
(512) 229-6356

Western Region

Western Region
24000 Avila Road
P.O. Box 30080
Laguna Niguel, CA 92677
(714) 643-4236

Honolulu District
595 Ala Moana Boulevard
Honolulu, HI 96813
(808) 541-1388

Guam Suboffice
801 Pacific News Building
238 O'Hara Street
Agana, Guam 96910
(671) 472-7349

Los Angeles District
300 North Los Angeles St.
Los Angeles, CA 90012
(213) 894-2780

Phoenix District
230 N. First Avenue
Room 2418
Phoenix, AZ 85025
(602) 379-3114

Tucson Suboffice
1970 West Ajo Way
P.O.Box 27127
Tucson, AZ 85726
(602) 670-6229

Las Vegas Suboffice
300 Las Vegas Boulevard, South
Las Vegas, NV 89101
(702) 384-3696

Reno Suboffice
350 South Center St.
Reno, NV 89502
(702) 784-5427

San Diego District
880 Front St.
San Diego, CA 92188
(619) 557-5645

San Francisco District
630 Sansome St.
Appraisers Building
San Francisco, CA 94111
(415) 705-4571

Fresno Suboffice
1130 "O" St.
Fresno, CA 93721
(209) 487-5091

Sacramento Suboffice
650 Capitol Mall
Room 1-060
Sacramento, CA 95814
(916) 551-2785

San Jose Suboffice
Federal Building and Courthouse
Room 1150
280 S. First Street
San Jose, CA 95113
(408) 291-7876

Student Data Processing Center

Student Data Processing Center
P.O. Box 140
Highway 25 South
Lexington, KY 40741

APPENDIX 6

Department of Labor Regional Offices

Region I
One Congress St., 10th Floor
Boston, MA 02114-2021
(617) 565-4446

States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Region II
201 Varick St., Room 755
New York, NY 10014
(212) 337-2378

States served: New York, New Jersey, Puerto Rico, U.S. Virgin Islands

Region III
Post Office Box 8796
Philadelphia, PA 19101
(215) 596-6363

States served: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia

Region IV
1371 Peachtree St., NE
Atlanta, GA 30309
(404) 347-3938

States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Region V
230 S. Dearborn St., Room 605
Chicago, IL 60604
(312) 353-1550

States served: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Region VI
525 Griffin St., Room 314
Dallas, TX 75202
(214) 767-4989

States served: Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Region VII
911 Walnut St., Room 700
Kansas City, MO 64106
(816) 426-3796

States served: Iowa, Kansas, Missouri, Nebraska

Region VIII
1961 Stout St.,16th floor
Denver, CO 80294
(303) 844-4613

States served: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Region IX
71 Stevenson St., Room 830
San Francisco, CA 94119
(415) 744-6647

States served: Arizona, California, Guam, Hawaii, Nevada

Region X
909 First Avenue, Room 1145
Seattle, WA 98174
(206) 553-5297

States served: Alaska, Idaho, Oregon, Washington

State Employment Security Agencies (alphabetical by state)	**DOL region**
Department of Industrial Relations Industrial Relations Building Montgomery, AL 36130 (205) 242-8990	IV
Employment Security Division State of Alaska PO Box 25509 Juneau, AK 99802 (907) 465-4531	X

Department of Economic Security IX
1300 West Washington St.
Phoenix, AZ 65005
(602) 542-4791

Employment Security VI
P.O. Box 2981
Little Rock, AR 72203
(501) 682-3129

Employment Development Department IX
Employment Data and Research Division
7000 Franklin Blvd.
Building 1100
Sacramento, CA 98823
(916) 739-4150

Labor Market Information Office VIII
Lakewood Job Service Center
393 South Harlan
Lakewood, CO 80226
(303) 937-4946

Connecticut Employment Security Division I
Labor Certification Unit
200 Folly Brook Boulevard
Weathersfield, CT 06109
(203) 566-2425

Delaware Department of Labor III
Job Service Division
Post Office Box 9029
Newark, DE 19711
(302) 368-7876

D.C. Department of Employment Services III
Employment Security Building
Room 325
500 C Street, NW
Washington, DC 20001
(202) 724-3770

Div. of Labor, Employment and Training IV
Dept of Labor and Employment Security
300 Atkins Building
1320 Executive Center Drive
Tallahassee, FL 32399-0667
(904) 488-7228

Georgia Department of Labor IV
114 International Boulevard, NE
Atlanta, GA 30303
(404) 656-3011

Dept. of Labor and Industry Relations IX
830 Punch Bowl St.
Room 320
Honolulu, HI 96831
(808) 548-3150

Department of Employment X
State of Idaho
317 Main Street
Boise, ID 83735
(208) 334-6161

Alien Labor Certification Unit V
401 South State Street
3rd Floor South
Chicago, IL 60605
(312) 793-8830

Alien Certification Specialist V
Indiana Department of Employment
and Training Services
10 North Senate Avenue
Indianapolis, IN 46204
(317) 232-0173

Department of Employment Services VII
1000 East Grand Avenue
Des Moines, IA 50319
(515) 281-5387

Department of Human Resources VII
401 Southwest Topeka Boulevard
Topeka, KS 66603-3182
(913) 296-5000

Department for Employment Services IV
Cabinet for Human Resources
275 East Main Street, 2nd Floor West
Frankfort, KY 40621
(502) 564-5331

Dept. of Employment and Training VI
Office of Employment Security
1001 North 23rd Street, Room 110
Baton Rouge, LA 70804-9094
(504) 342-2995

Bureau of Employment Services I
Labor Certifications
20 Union Street
Augusta, ME 04330
(207) 289-5562

Department of Employment and Training III
100 North Eutaw Street
Baltimore, MD 21201
(301) 333-7065

Department of Employment and Training I
Labor Certification Unit
Charles Hurley Building
Government Center
Boston, MA 02114
(617) 727-4751

Alien Certification Specialist V
Michigan Employment Security Commission
7310 Woodward Avenue
Detroit, MI 48202
(313) 876-5280

Alien Certification Specialist V
Minnesota Department of Jobs
and Training
390 North Robert Street
St. Paul, MN 55101
(612) 296-6425

Employment Security Commission IV
P.O. Box 1699
Jackson, MS 39215-1699
(601) 961-7400

Dept. of Labor and Industrial Relations VII
PO Box 59
Jefferson City, MO 65204-0059
(314) 751-2461

Department of Labor and Industry VIII
P.O. Box 1728
Helena, MT 59624
(406) 444-3555

Department of Labor VII
Box 94600
State House Station
Lincoln, NE 68509-4600
(402) 471-3405

Nevada Employment Security Department IX
135 South 8th Street
Las Vegas, NV
(702) 486-3404

Department of Employment Security I
Labor Certification Unit
32 South Main Street, Room 204
Concord, NH 03301
(603) 228-4054

New Jersey Department of Labor II
P.O. Box 2765
Trenton, NJ 08825
(609) 292-2337

New Mexico Department of Labor VI
Field Services Support Bureau
401 Broadway, NE
Albuquerque, NM 87103-1928
(505) 841-8414

State of New York Department of Labor II
Alien Employment Certification
1 Main Street, Room 501
Brooklyn, NY 11201
(718) 797-7224

Employment Security Commission IV
P.O. Box 25903
Raleigh, NC 27611
(919) 733-7546

Job Service VIII
P.O. Box 1637
Bismarck, ND 53502
(701) 255-7134

Alien Certification Specialist V
Ohio Bureau of Employment Services
P.O. Box 1618 (899 E. Broad St., 3rd Floor)
Columbus, OH 43216
(614) 644-7303

Oklahoma Employment Security VI
Commission
Alien Employment Certification Program
303 Will Rogers Memorial Office Building
Oklahoma City, OK 73105
(405) 557-7126

Oregon State Employment Division X
875 Union Street NE
Room 208
Salem, OR 97311
(503) 378-3234

Pennsylvania Office of Employment Security III
Department of Labor and Industry
1720 Labor and Industry Building
Harrisburg, PA 17121
(717) 787-4781

Bureau of Employment Security II
Research and Analysis Section
15th Floor
935 Munoz Rivera Ave.
Hato Rey, PR 00918

Department of Employment Security I
Labor Certification Unit
101 Friendship Street
Providence, RI 02903
(401) 277-3724

Employment Security Commission IV
155 Gadsden Street
PO Box 995
Columbus, SC 29202
(803) 737-2617

Department of Employment Services IV
Fifth Floor
Volunteer Plaza Building
500 James Robinson Parkway
Nashville, TN 37245-0001
(615) 741-2131

Texas Employment Commission VI
Alien Labor Certification Unit
Room 424 T
TEC Building
Austin, TX 78778
(512) 463-2332

Department of Employment Security VIII
P.O. Box 11249
Salt Lake City, UT 94147
(801) 536-7800

Department of Employment and Training I
Labor Certification Unit
P.O. Box 488
Green Mountain Drive
Montpelier, VT 05602
(802) 229-0311

Virginia Employment Commission III
Alien Certification Coordinator
P.O. Box 1358
Richmond, VA 23211
(804) 786-4714

Department of Labor II
53 A Kronprinasane Gade
Charlotte Amalie
St Thomas VI 00801 3368

Employment Security Department X
Employment Service Division
Attn: AEC Unit
Olympia, WA 98504
(206) 438-4064

Dept. of Employment Security III
State Office Building
Charleston, WV 25306
(304) 348-0219

Alien Certification Specialist V
Dept. of Industry, Labor and
Human Relations
PO Box 7903
Madison, WI 53707
(608) 266-8564

Employment Security Commission VIII
P.O. Box 2760
Casper, WY 82602
(307) 235-3200

APPENDIX 7

Visa Issuing Posts

C = Consulate
CG= Consulate General
NIV= Non-Immigrant Visas Only
US Interests Section =U.S. Interests Section, Swiss Embassy, Havana

Country	Post	Designation	Visa Services
Algeria	Algiers	Embassy	All
	Oran	C	NIV
Antigua and Barbuda	St. Johns	Embassy	NIV
Argentina	Buenos Aires	Embassy	All
Australia	Canberra	Embassy	NIV
	Melbourne	CG	NIV
	Perth	CG	All
	Sydney	CG	All
Austria	Vienna	Embassy	All
Bahamas	Nassau	Embassy	All
Bahrain	Manama	Embassy	All
Bangladesh	Dhaka	Embassy	All
Barbados	Bridgetown	Embassy	All
Belgium	Antwerp	CG	NIV
	Brussels	Embassy	All
Belize	Belize City	Embassy	All
Benin	Cotonou	Embassy	All
Bermuda	Hamilton	Embassy	All
Bolivia	La Paz	Embassy	All
Botswana	Gaborone	Embassy	All

Botswana	Gaborone	Embassy	All
Brazil	Brasilia	Embassy	NIV
	Porto Alegre	C	NIV
	Recife	C	NIV
	Rio de Janeiro	CG	All
	São Paulo	CG	NIV
Brunei	Bandar Seri Begawan	Embassy	NIV
Bulgaria	Sofia	Embassy	All
Burkina Faso	Ouagadougou	Embassy	All
Burundi	Bujumbura	Embassy	All
Cameroon	Douala	C	B-1/B-2
	Yaoundé	Embassy	All
Canada	Calgary	CG	All
	Halifax	CG	NIV
	Montréal	CG	All
	Ottawa	Embassy	All
	Quebec City	CG	NIV
	Toronto	CG	All
	Vancouver	CG	All
Cape Verde	Praia	Embassy	All
Central African Republic	Bangui	Embassy	All
Chad	N'Djamena	Embassy	NIV
Chile	Santiago	Embassy	All
China	Beijing	Embassy	NIV
	Chengdu	CG	NIV
	Guangzhou	CG	All
	Shanghai	CG	All
	Shenyang	CG	NIV
Colombia	Barranquilla	C	NIV
	Bogota	Embassy	All
Commonwealth of Independent States*	Moscow	Embassy	All
	St. Petersburg	C	NIV
Comoros	Moroni	Embassy	NIV
Congo	Brazzaville	Embassy	All
Costa Rica	San Jose	Embassy	All
Côte d'Ivoire	Abidjan	Embassy	All
Cuba	Havana	US Interests Section	All

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* At press time, embassies in the newly independent countries are in a state of transition and are expected to expand services in the near future.

Cyprus	Nicosia	Embassy	All
Czech and Slovak Federal Republic	Bratislava	C	NIV
	Prague	Embassy	All
Denmark	Copenhagen	Embassy	All
Djibouti	Djibouti	Embassy	All
Dominican Republic	Santo Domingo	Embassy	All
Ecuador	Guayaquil	CG	All
	Quito	Embassy	NIV
Egypt	Alexandria	CG	NIV
	Cairo	Embassy	All
El Salvador	San Salvador	Embassy	All
Equatorial Guinea	Malabo	Embassy	NIV
Estonia	Tallin	Embassy	NIV
Ethiopia	Addis Ababa	Embassy	All
Fiji	Suva	Embassy	All
Finland	Helsinki	Embassy	All
France	Bordeaux	CG	NIV
	Fort-de-France (Martinique)	CG	All
	Lyon	CG	NIV
	Marseille	CG	NIV
	Paris	Embassy	All
Gabon	Libreville	Embassy	All
The Gambia	Banjul	Embassy	All
Germany	Berlin	CG	All
	Bonn	Embassy	NIV
	Frankfurt am Main	CG	All
	Hamburg	CG	NIV
	Munich	CG	NIV
	Stuttgart	CG	NIV
Ghana	Accra	Embassy	All
Greece	Athens	Embassy	All
	Thessaloniki	CG	Reissuance only
Grenada	St. George's	Embassy	None
Guatemala	Guatemala	Embassy	All
Guinea	Conakry	Embassy	NIV
Guinea-Bissau	Bissau	Embassy	All
Guyana	Georgetown	Embassy	All
Haiti	Port-au-Prince	Embassy	All

Honduras	Tegucigalpa	Embassy	All
Hong Kong	Hong Kong	CG	All
Hungary	Budapest	Embassy	All
Iceland	Reykjavik	Embassy	All
India	Bombay	CG	All
	Calcutta	CG	All
	Madras	CG	All
	New Delhi	Embassy	All
Indonesia	Jakarta	Embassy	All
	Medan	CG	NIV
	Surabaya	CG	NIV
Ireland	Dublin	Embassy	All
Israel	Jerusalem	CG	All
	Tel Aviv	Embassy	All
Italy	Florence	CG	NIV (San Marino only)
	Milan	CG	NIV
	Naples	CG	All
	Rome	Embassy	NIV
Jamaica	Kingston	Embassy	All
Japan	Fukuoka	C	NIV
	Naha	CG	All
	Osaka-Kobe	CG	NIV
	Sapporo	CG	NIV
	Tokyo	Embassy	All
Jordan	Amman	Embassy	All
Kenya	Nairobi	Embassy	All
Korea	Pusan	C	NIV
	Seoul	Embassy	All
Kuwait	Kuwait	Embassy	All
Latvia	Riga	Embassy	NIV
Laos	Vientiane	Embassy	All
Lebanon	Beirut	Embassy	None
Lesotho	Maseru	Embassy	NIV
Liberia	Monrovia	Embassy	All
Lithuania*	Vilnius	Embassy	NIV
Luxembourg	Luxembourg	Embassy	NIV
Madagascar	Antananarivo	Embassy	All

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* At press time, embassies in the newly independent countries are in a state of transition and are expected to expand services in the near future.

Malawi	Lilongwe	Embassy	All
Malaysia	Kuala Lumpur	Embassy	All
Mali	Bamako	Embassy	All
Malta	Valletta	Embassy	All
Marshall Islands	Majuro	US Rep.	NIV
Mauritania	Nouakchott	Embassy	NIV
Mauritius	Port Louis	Embassy	All
Mexico	Ciudad Juarez/Chihuahua	CG	All
	Guadalajara, Jalisco	CG	NIV
	Hermosillo	CG	NIV
	Matamoros	CG	NIV
	Merida	CG	NIV
	Mexico City	Embassy	NIV
	Monterrey	CG	NIV
	Tijuana	CG	All
Micronesia	Kolonia	Embassy	All
Mongolia	Ulaanbaatar	Embassy	NIV
Morocco	Casablanca	CG	All
	Rabat	Embassy	NIV
Mozambique	Maputo	Embassy	All
Myanmar	Yangon	Embassy	All
Nepal	Kathmandu	Embassy	All
Netherlands	Amsterdam	CG	All
	The Hague	Embassy	IV (A, G,C-2, C3 only)
Netherlands Antilles	Curaçao	CG	All
New Zealand	Auckland	CG	All
	Wellington	Embassy	NIV
Nicaragua	Managua	Embassy	All
Niger	Niamey	Embassy	All
Nigeria	Kaduna	CG	NIV
	Lagos	Embassy	All
Norway	Oslo	Embassy	All
Oman	Muscat	Embassy	All
Pakistan	Islamabad	Embassy	NIV
	Karachi	CG	All
	Lahore	CG	All
	Peshawar	C	NIV
Palau	Koror	Status Liaison Office	NIV

Panama	Panama City	Embassy	All
Papua New Guinea	Port Moresby	Embassy	All
Paraguay	Asunción	Embassy	All
Peru	Lima	Embassy	All
Philippines	Cebu	CG	NIV
	Manila	Embassy	All
Poland	Krakow	CG	NIV
	Poznan	C	NIV
	Warsaw	Embassy	All
Portugal	Lisbon	Embassy	All
	Ponta Delgada (Azores)	C	All
Romania	Bucharest	Embassy	All
Saudi Arabia	Dharan	CG	NIV
	Jeddah	CG	NIV
	Riyadh	Embassy	All
Senegal	Dakar	Embassy	All
Seychelles	Victoria	Embassy	All
Sierra Leone	Freetown	Embassy	All
Singapore	Singapore	Embassy	All
Solomon Islands	Honiara	C	NIV
South Africa	Capetown	CG	NIV
	Durban	CG	NIV
	Johannesburg	CG	All
	Pretoria	Embassy	NIV
Spain	Barcelona	CG	NIV
	Madrid	Embassy	ALL
Sri Lanka	Colombo	Embassy	All
Sudan	Khartoum	Embassy	All
Suriname	Paramaribo	Embassy	All
Swaziland	Mbabane	Embassy	NIV
Sweden	Stockholm	Embassy	All
Switzerland	Bern	Embassy	All
	Geneva	Branch Office	Emergency NIVs
	Zurich	CG	NIV
Syria	Damascus	Embassy	All
Taiwan	Taipei	American Institute	All
Tanzania	Dar es Salaam	Embassy	All

Thailand	Bangkok	Embassy	All
	Chaing Mai	CG	NIV
Togo	Lomé	Embassy	All
Trinidad and Tobago	Port of Spain	Embassy	All
Tunisia	Tunis	Embassy	All
Turkey	Ankara	Embassy	All
	Istanbul	CG	All
United Arab Emirates	Dubai	Embassy	NIV
United Kingdom	Belfast, Northern Ireland	CG	All
	London	Embassy	All
Uruguay	Montevideo	Embassy	All
Venezuela	Caracas	Embassy	All
	Maracaibo	C	NIV
Yemen Arab Republic	Sanaa	Embassy	All
Yugoslavia*	Belgrade	Embassy	All
	Zagreb	CG	All
Zaire	Kinshasa	Embassy	All
	Lubumbashi	CG	NIV
Zambia	Lusaka	Embassy	All
Zimbabwe	Harare	Embassy	All

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* At press time, new posts for Croatia, Slovenia, and Bosnia-Hercegovina had not yet opened.

APPENDIX 8

References

Statutes and Regulations

Bender's Immigration and Nationality Act Pamphlet. 1991. Matthew Bender, 1275 Broadway, Albany, NY 12201, (518) 487-3000. $75.

Code of Federal Regulations. Title 8, "Aliens and Nationality." 1992. Office of the Federal Register, Washington, DC. Order # 869-017-00026-4 from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238. $17.

———Title 20, "Employees' Benefits." 1992, parts 500–end. Office of the Federal Register, Washington, DC. Order # 869-017-00064-5 from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238. $27.

———Title 22, "Foreign Relations," parts 1-299. 1991. Office of the Federal Register, Washington, DC. Order # 869-013-00075-7 from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238. $25.

———Title 22, "Foreign Relations," parts 300-end. 1991. Office of the Federal Register, Washington, DC. Order # 869-013-00076-5 from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238. $18.

Individual titles of the *Code of Federal Regulations* are updated annually and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Immigration and Nationality Act, 8th ed. 1989. Committee on the Judiciary, U.S. House of Representatives, Washington, DC. Order #0552-070-06575-3 from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. $13.

A compilation of the Immigration and Nationality Act as amended through 1989. This edition does not include statutory changes made in the Immigration Act of 1990 as well as other amendments made since 1989. The 9th edition is expected soon.

Subscription Services and Publications

Federal Register. Office of the Federal Register, Washington, DC. Annual subscriptions available from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. $340 per year.

Contains proposed and final changes in regulations (between yearly printing of bound volumes of the *Code of Federal Regulations*), grant notices, and other announcements from Federal agencies.

Foreign Affairs Manual. Vol. 9, Visas, parts 1-4. U.S. Department of State, Washington, DC. Ordering information available from Distribution Service Branch, FAIM/PS/DS, Room B-845, Department of State, Washington, DC 20520.

This volume of the *Foreign Affairs Manual* contains Department of State interpretations and policy instructions, updated as changes occur, regarding visa issuance.

Interpreter Releases: Report and Analysis of Immigration and Nationality Law. Federal Publications, Inc., 1120 20th Street, NW, Suite 500 South, Washington, DC 20036-3484, (615) 377-3322. Annual subscription, $370.

Interpreter Releases is published four times per month and contains updates on immigration and related matters, analyses of immigration legislation and regulations, and reprints of significant laws, regulations, and policy statements.

NAFSA Government Affairs Bulletin. NAFSA: Association of International Educators, 1875 Connecticut Ave, NW, Suite 1000, Washington, DC 20009-5728. Annual subscription rates: $36 for members, $64 for nonmembers. Overseas subscribers pay an additional $10 mailing fee.

Published 8 times per year, the *Government Affairs Bulletin* features the latest information on developments in state, national, and foreign governments affecting international educational exchange.

NAFSA Newsletter. NAFSA: Association of International Educators, 1875 Connecticut Ave, NW, Suite 1000, Washington, DC 20009-5728. Annual subscription rates: $35 in the United States; $38 for Canada and Mexico; $50 for other destinations. Included as a benefit of NAFSA membership without additional charge.

Operations Instructions, Regulations, and Interpretations. U.S. Immigration and Naturalization Service, Washington, DC. Order #927-002-00000-1 from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Annual subscription: $196 (domestic); $245 (foreign).

A complete collection of INS directives and policy interpretations, updated as changes occur.

Visa Bulletin. Visa Office, U.S. Department of State, Bureau of Consular Affairs, Washington, DC 20520, (202) 647-0510. No charge.

A monthly report on availability of immigrant visa numbers and other information.

Directories

AILA U.S. Consular Posts Handbook. American Immigration Lawyers Association, Publications Department, 1400 Eye Street, NW, Suite 1200, Washington, DC 20005. $15 members; $18 nonmembers.

Worldwide guide to 240 State Department consular posts.

Congressional Yellow Book. Published quarterly by Monitor Publishing, 104 Fifth Avenue, New York, NY 10011, (212) 627-4140. Yearly subscriptions are $155.

Who's who on Capitol Hill, including staff titles, addresses, and phone numbers, and biographical information on members of Congress.

Diplomatic List. 1990. U.S. Department of State, Washington, DC. Order # 744-004-00004-4 from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238. $7.50.

Addresses and phone numbers of foreign government embassies and consular offices located in Washington, DC; includes names and titles of staff members.

Federal Yellow Book. Published quarterly by Monitor Publishing, 104 Fifth Avenue, New York, NY 10011, (212) 627-4140. Yearly subscriptions are $155.

Who's who in the federal agencies, including staff titles, addresses, and phone numbers.

Foreign Consular Posts in the United States. 1986. U.S. Department of State, Washington, DC. Out of print.

Key Officers of Foreign Service Posts. U.S. Department of State, Washington, DC. Order #744-006-00000-7 from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Annual subscription, $5.

Names U.S. diplomats posted overseas.

U.S. Government Guides and Resources

"Codes for Educational and Cultural Exchange." Revised 1986. U.S. Information Agency, 301 4th Street, S.W., Washington, DC 20547. No charge.

Instructions and code listings for use by J-1 exchange-visitor programs using Form IAP-66.

"Exchange Visitor Skills List." U.S. Information Agency, 301 4th Street, S.W., Washington, DC 20547. No charge.

"Handbook for Employers." U.S. Immigration and Naturalization Service, Washington, DC. Order from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

A step-by-step explanation of what employers must do to certify employment eligibility; includes Form I-9 and a list of INS offices.

"Instructions for Filing Applications for Alien Employment Certification for Permanent Employment in the United States." U.S. Employment and Training Administration, Department of Labor, Washington, DC. Also available through state employment service offices.

Contains the application form for a labor certification.

"Scholarships and Fellowships." Internal Revenue Service publication 520. Order from IRS, Assistant Commissioner (International), Attention: IN:C:TPS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024, (800) 829-FORM. Free of charge.

"Tax Information for Visitors to the U.S." Internal Revenue Service publication 513. Order from IRS, Assistant Commissioner (International), Attention: IN:C:TPS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024, (800) 829-FORM. Free of charge.

Technical Assistance Guide 656, Labor Certifications. Employment and Training Administration, U.S. Department of Labor, Washington, DC. Order #029-014-00217-8 from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. $11.

Addressed to Department of Labor employees, the "TAG" gives detailed guidelines concerning the alien labor certification program.

"U.S. Tax Guide for Aliens." Internal Revenue Service publication 519. Order from IRS, Assistant Commissioner (International), Attention: IN:C:TPS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024, (800) 829-FORM. Free of charge.

"U.S. Tax Treaties." Internal Revenue Service publication 901. Order from IRS, Assistant Commissioner (International), Attention: IN:C:TPS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024, (800) 829-FORM. Free of charge.

"Volunteer Assistor's Guide—Foreign Student Text." Internal Revenue Service publication 678-FS (Revised 11/91). Order from IRS, Assistant Commissioner (International), Attention: IN:C:TPS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024, (800) 829-FORM. Free of charge.

"Withholding of Tax on Nonresident Aliens and Foreign Corporations." Internal Revenue Service publication 515. Order from IRS, Assistant Commissioner (International), Attention: IN:C:TPS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024, (800) 829-FORM. Free of charge.

Nongovernment Guides and Resources

Employers' Immigration Compliance Guide. 1987. Hope M. Frye and H. Ronald Klasko. Matthew Bender, 1275 Broadway, Albany, NY 12201, (518) 487-3000. $265.

Immigration Act of 1990. National Lawyers Guild. Clark Boardman Company, Ltd., 375 Hudson Street, New York, NY 10014. $65.

Immigration Law. Abridged ed. Charles Gordon and Ellen Gittel Gordon. Matthew Bender and Company, Inc., 1275 Broadway, Albany, NY 12201, (518) 487-3000. $125.

Previously entitled *Immigration Law and Procedure, Desk Edition*, this single volume publication is abridged from the 11 volume *Immigration Law and Procedure* (see below).

Immigration Law and Defense. Immigration Project of the National Lawyers Guild. Clark Boardman Company, Ltd., 375 Hudson Street, New York, NY 10014. $195.

Immigration Law and Practice. 3rd ed. Jack Wasserman. Joint Committee on Continuing Legal Education, American Bar Association, and the American Law Institute, Philadelphia, PA. Order #B-238 from the American Law Institute, 4025 Chestnut Street, Philadelphia, PA 19104. $20.

Immigration Law and Procedure. 11 vols. Charles Gordon and Harry Rosenfield. Matthew Bender and Company, Inc., 1275 Broadway, Albany, NY 12201, (518) 487-3000. $1040.

Immigration Procedures Handbook: A How-to-Guide for Legal and Business Professionals. 1991. Austin T. Fragomen, Alfred J. Del Rey, and Steven C. Bell. Clark Boardman Company, 375 Hudson Street, New York, NY 10014. $135.

The Rights of Aliens: An American Civil Liberties Union Handbook. 1977. David Carliner. Avon Books, 959 8th Avenue, New York, NY 10019. Out of print.

Special Update: 1986 Immigration and Nationality Acts. 1987. Lawrence B. Kleinman for the National Immigration Project, National Lawyers Guild. Clark Boardman Company, 375 Hudson Street, New York, NY 10014. $75.

Steel on Immigration Law. 1985. Richard D. Steel. Lawyers Cooperative Publishing Company, Aqueduct Building, Rochester, NY 14694.

Understanding the 1986 Immigration Law. 1987. Maurice A. Roberts and Stephen Yale-Loehr. Federal Publications, Inc., 1120 20th Street, N.W., Washington, DC 20036. Out of print.

Understanding the Immigration Act of 1990. Stephen Yale-Loehr. Federal Publication, Inc., 1120 20th Street, N.W., Washington, DC 20036. $49.95.

U.S. Federal Income Tax Guide for International Students and Scholars. February 1993. Deborah L. Vance and Catheryn Cotten. NAFSA: Association of International Educators, 1875 Connecticut Avenue, N.W., Suite 1000, Washington, DC 20009-5728, (202) 939-3110. $20 for members; $30 for nonmembers.

NAFSA's abridged guide to foreign-student taxation.

U.S. Taxation of International Students and Scholars—A Manual for Advisers and Administrators. February 1993. Bertrand M. Harding, Jr., and Norm Peterson. NAFSA: Association of International Educators, 1875 Connecticut Avenue, N.W., Suite 1000, Washington, DC 20009-5728, (202) 939-3110. $60 for members of NAFSA and the Liaison Group for International Educational Exchange; $95 for nonmembers.

Authored by a tax attorney specializing in tax-exempt organizations and copublished by NAFSA and the Liaison Group, the manual delivers a thorough treatment of taxation, withholding, and reporting of scholarships, fellowships, and other grant payments made to foreign students, scholars, and faculty.

APPENDIX 9

Countries Having Passport Agreements with the United States

- Algeria
- Antigua and Barbuda
- Australia
- Austria (*Reisepass* only)
- Bahamas
- Bangladesh (travel permits and passports)
- Belgium
- Bolivia
- Brazil
- Canada
- Chile
- Colombia
- Costa Rica
- Côte d'Ivoire
- Cuba
- Cyprus
- Denmark
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Ethiopia
- Finland
- France
- Germany
- Greece
- Grenada
- Guatemala
- Guinea
- Guyana
- Honduras
- Hong Kong (certificates of identity and passports)
- Iceland
- India
- Iran
- Ireland
- Israel
- Italy
- Jamaica
- Japan
- Jordan
- Korea
- Kuwait
- Laos
- Lebanon
- Libya
- Liechtenstein
- Luxembourg
- Madagascar
- Malaysia
- Malta
- Mauritius
- Mexico
- Monaco
- Morocco
- Netherlands, The
- New Zealand
- Nicaragua (diplomatic and official passports only)
- Nigeria
- Norway
- Pakistan
- Panama
- Paraguay
- Peru
- Philippines
- Poland
- Portugal
- Qatar
- St. Kitts and Nevis
- St. Lucia
- St. Vincent and the Grenadines
- Senegal
- Singapore
- Soviet Union (seamen only)*
- Spain
- Sri Lanka
- Sudan

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*On 2 January 1992 the Office of Soviet Union Affairs at the Department of State became the Office of Independent States and Commonwealth Affairs. The address is Room 4229, U.S. Department of State, Washington, DC 20520. Telephone (202) 647-8956, Fax (202) 647-3506.

Suriname
Sweden
Switzerland
Syria
Thailand
Trinidad and Tobago
Tunisia
Turkey
United Arab Emirates
United Kingdom
Uruguay
Venezuela
Yugoslavia*

Travel documents issued by the government of the Trust Territory of the Pacific Islands are considered to be valid for the return of the bearer to the Trust Territory for a period of 6 months beyond the specified expiration date.

Source: Department of State Public Notice 633, *Federal Register,* 4 June 1992, p. 23608. Amended by Public Notice 954, *Federal Register,* 26 February 1986, p. 6853. Amended by Public Notice 970, *Federal Register,* 3 July 1986, p. 24467; Public Notice 1010, *Federal Register,* 13 May 1987, p. 18037; Public Notice 1022, *Federal Register,* 14 August 1987, p. 30274; Public Notice 1061, *Federal Register,* 24 May 1988, p. 18646; Public Notice 1380, *Federal Register,* 1 May 1991, p. 20061.

Changes to the list of countries having passport agreements with the United States are expected imminently from the Department of State. Changes become official when published in the *Federal Register.*

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* The Office of Eastern Europe and Yugoslav Affairs at the Department of State is now the Office of Eastern European Affairs. The address is Room 5221, U.S. Department of State, Washington, D.C. 20520. Telephone (202) 647-3052, Fax (202) 647-0555.

APPENDIX 10

Canadian Visitor Visa Exemptions

(as of December 1991)

The following people are exempt from Canadian visitor visa requirements:

1. Citizens of Andorra, Antigua and Barbuda, Australia, Austria, Bahamas, Barbados, Belgium, Belize, Botswana, Brunei, Costa Rica, Cyprus, Denmark, Dominica, Finland, France, Germany, Greece, Grenada, Iceland, Ireland, Israel, Italy, Japan, Kiribati, Lesotho, Liechtenstein, Luxembourg, Malawi, Malaysia, Malta, Mexico, Monaco, Namibia, Nauru, Netherlands, New Zealand, Norway, Papua New Guinea, Paraguay, St. Kitts and Nevis, St. Lucia, St. Vincent, San Marino, Saudi Arabia, Seychelles Rep., Singapore, Solomon Islands, Spain, Suriname, Swaziland, Sweden, Switzerland, Tonga, Tuvalu, United Kingdom, United States, Uruguay, Venezuela, Western Samoa, Zambia, and Zimbabwe.

The people of Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands are non-voting U.S. citizens and are visa exempt. Residents of American Samoa and Palau are U.S. nationals and are visa exempt.

The Marshall Islands and Micronesia concluded a Compact of Free Association with the United States in 1986. These islands thus became self governing. Residents of the Marshall Islands and Micronesia are neither U.S. citizens nor U.S. nationals and require visitor visas.

2. British Citizens and British Overseas Citizens who are readmissable to the United Kingdom.

3. British dependent territories citizens from Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Hong Kong, Montserrat, Pitcairn, St. Helena, or the Turks and Caicos Islands.

4. Persons holding passports or travel documents issued by the Holy See.

5. U.S. Permanent Residents, i.e. holders of U.S. Alien Registration Cards (Form I-551).

6. Holders of U.S. Temporary Resident Card (Form I-688) with the following notation on the back:

"Temporary evidence of lawful admission for permanent residence and employment authorized. Valid for one year from the expiration date on the reverse side of this I-688. Valid for travel outside the United States if the named bearer has not abandoned his or her residence and is returning after a temporary absence abroad not exceeding one year. Presentation of a valid document will authorize a transportation line to accept the named bearer on board for travel to the United States without liability under Section 273 of the Immigration and Nationality Act. This card is void if altered and must be carried at all times."

7. Persons who have been granted "Advance Parole" to the United States (Form I-512) who are in possession of a letter from a U.S. consulate in Canada inviting them to an interview concerning their American immigration application.

8. Persons holding passports containing a valid "Diplomatic Acceptance," "Consular Acceptance," or "Official Acceptance" stamp issued by the Chief of Protocol for the Department of External Affairs on behalf of the Government of Canada.

9. Nationals of the United States and persons lawfully admitted to the United States for permanent residence.

10. Persons in possession of valid student authorizations or employment authorizations seeking to return as visitors to Canada from the United States or St. Pierre and Miquelon where the authorizations were issued prior to the departure of those persons from Canada.

11. Persons visiting Canada who, during that visit, also visit the United States or St. Pierre and Miquelon and return to Canada therefrom as visitors within the period authorized on their initial entry or any extension thereto.

APPENDIX 11

NAFSA Government Regulations Advisory Committee 1992–93

National Team

Catheryn Cotten (Chair)
Duke University Medical Center
Box 3882 DUMC
Durham, NC 27710
(919) 684-6729

Adam Green
Sullivan & Worcester
One Post Office Square
Boston, MA 02109
(617) 338-2412

Sharon Ladd
Harvard University
1350 Massachusetts Avenue
858 Holyoke Center
Cambridge, MA 02138
(617) 495-2789

Greg Leonard
P.O. Box 870304
University of Alabama
Tuscaloosa, AL 35487-0304
(205) 348-5405

Harvey Stein
International Affairs
Administration Building 224
University of Chicago
5801 S. Ellis Avenue
Chicago, IL 60637
(312) 702-7752

Richard B. Tudisco
Columbia University
International Student Office
208 Lewisohn Hall
New York, NY 10027
(212) 854-3587

Marjory Gooding
International Students and Scholars
University of Colorado-Boulder
Campus Box 123
Boulder, CO 80309
(303) 492-8057

Regional Representatives

Region I
Curt DeVere
459 Schmidt Hall, PB-12
University of Washington
Seattle, WA 98195
(206) 543-0840

Region II
Marilyn Owen
International Student Services
University of Utah
Salt Lake City, UT 84112
(801) 581-8876

Region III
Kathy Sands
Human Services Department
Texas A&M University
College Station, TX 77843-1255
(409) 845-4141

Region IV
Margaret Brooke
University of Iowa
120 International Center
Iowa City, IA 52242
(319) 335-0335

Region V
Charlene Schmult
International Center
University of Michigan
603 E. Madison Street
Ann Arbor, MI 48109-1370
(313) 447-2302

Region VI
Martha Wailes
Office of International Services
Indiana University
Franklin Hall Room 306
Bloomington, IN 47405
(812) 855-9086

Region VII
Nancy Rogers
Office of International Programs
University of Mississippi
University, MS 38677
(601) 232-7404

Region VIII
Masume Assaf
Office of International Programs
Penn State University
222 Boucke Building
University, PA 16802
(814) 865-6348

Darryl Zeigler
International Services
Georgetown University
Washington, DC 20057
(202) 687-5867

Region X
Ellen Badger
SUNY Binghamton
Box 6000
Binghamton, NY 13902-6000
(607) 777-2510

Region XI
David Enderlin
International Student Office
Northeastern University
360 Huntington Avenue
Boston, MA 02115
(617) 437-2318

Region XII
Clay Ballard
Services for International Students and Scholars
University of California-Davis
330 South Hall
Davis, CA 95616
(916) 752-0864

APPENDIX 12

U.S. Tax Rules Applicable to Foreign Nationals

Paula N. Singer

1. Does a foreign national have to pay U.S. income taxes? Anyone who has income from U.S. sources may be obligated to pay U.S. income taxes. A foreign national's federal income tax is determined by the individual's tax status: resident alien or nonresident alien. [26 U.S.C. 61, 26 U.S.C. 871]

2. How is tax status determined? A foreign national's tax status is determined by the individual's visa classification and physical presence in the United States under some relatively complex tax rules. [26 U.S.C. 7701(b)]

3. How can a foreign national determine his or her tax obligations? IRS publication 519, "U.S. Tax Guide for Aliens," describes federal income tax rules and tax-return filing obligations for foreign nationals.

4. What are the general rules determining tax status? An F-I or J-I student in the United States for no more than 5 calendar years, including part years, is a nonresident alien. [26 U.S.C. 7701(b)(3); 26 U.S.C. 7701(b)(5)(E)(ii)]

A J-I teacher or trainee in the United States for 2 calendar years or less, including part years, is a nonresident alien. [26 U.S.C. 7701(b)(5)(3), 26 U.S.C. 7701(b)(5)(E)(i)] A J-I teacher or trainee who was previously in the United States on an F or J visa for 2 calendar years, including part years, in the previous 6 years is a resident alien. [26 U.S.C. 7701(b)(5)(E)(i)] The J-I limit of 2 years is changed to 4 years if all the foreign national's income for services performed in the United States is from foreign sources. [26 U.S.C. 7701(b)(5)(E)(i)]

The same rules apply to family members on F and J visas. Since each family member's presence in the United States may have been different from the spouse's or parent's presence, the F or J family member's tax status may be different. [26 U.S.C. 7701(b)(5)(D)]

A foreign national on any foreign-government related visa such as A-1 is a nonresident alien. [26 U.S.C. 7701(b)(5)(B)]

A foreign national who is a U.S. lawful permanent resident is a resident alien. [26 U.S.C. 7701(b)(I)(A)(i)]

A foreign national who has any other visa status, or who is out of status or in the United States illegally, is a nonresident alien until he or she has been in the United States for 183 days in the current year or for 183 days in the current and prior 2 years based on the following formula: all of the days in the current year plus one-third of the days in the prior year plus one-sixth of the days in the second preceding year. [26 U.S.C. 7701(b)(I) (A) (ii), 26 U.S.C. 7701(b)(3)(A)]

Note: There are exceptions to these rules. All facts and circumstances must be reviewed before advising a foreign national of his or her U.S. tax obligations.

5. How is a nonresident alien's U.S. tax obligation determined? A nonresident alien is taxed only on income from U.S. sources, which includes compensation for services performed in the United States regardless of the location or currency of the payment. [26 U.S.C. 861(a)]

Income effectively connected to a U.S. trade or business, compensation for services, and the taxable portion of scholarships and fellowships are taxed at graduated rates using "single" or "married-filing-separately" rates. Other fixed or determinable annual or periodic income is taxed at a 30-percent rate. [26 U.S.C. 871(a) and (b), 26 U.S.C. 861(a)(3)]

Most nonresident aliens are limited to *one* personal exemption; the amount of this exemption is $2,150 for 1991 returns. A nonresident alien can only claim certain itemized deductions, not the standard deduction (see IRS publication 519).

The foreign national may be eligible for tax treaty benefits that may reduce or eliminate his or her tax obligation. Certain types of income may be exempt under Internal Revenue Code provisions as well. [26 U.S.C. 872(b)]

6. What tax return does a nonresident alien file? A nonresident alien files Form 1040NR. A return is required if the individual has any income subject to graduated tax rates, is claiming tax treaty benefits, or has had insufficient withholding on fixed or determinable, annual or periodic income (see Form 1040NR instructions).

7. Where can the individual obtain forms? Forms can be obtained by calling the IRS at (800) 424-3676.

8. Where can the individual obtain tax treaty information? General information on tax treaties is available in IRS publication 901, "U.S. Tax Treaties." Information on specific treaties appears in the *Cumulative Bulletin* (Government Printing Office, Washington, D.C.; see ordering instructions in publication 519 or 901). The *Cumulative Bulletin* is also available at law libraries.

9. How is a resident alien taxed? A resident alien is taxed on worldwide income in the same manner as a U.S. citizen. Special rules and filing requirements apply to the year in which the individual's status changes from resident alien to nonresident alien, usually upon departure from the United States (see IRS publication 519). [26 U.S.C. 7701(b)(2)]

10. Can a resident alien claim tax-treaty benefits? Some tax treaties allow benefits to be claimed by foreign students, teachers and researchers regardless of the individual's tax status.

11. How does a resident alien claim tax-treaty benefits? The IRS has yet to issue tax return instructions for these situations (but see 26 U.S.C. 6114 and regulations). To avoid jeopardizing one's current or future status as a U.S. lawful permanent resident, the individual must file as a resident alien and file Form 1040. The IRS may not accept tax-treaty benefits claimed on Form 1040.

12. Do the same income-tax-withholding rules apply to resident and nonresident aliens? No. Withholding rules for nonresident aliens are different. A nonresident alien can only claim "single" status (regardless of actual marital status) and one exemption on Form W-4. A nonresident alien may not use Form W-4 to reduce withholding taxes. Also, special withholding rules apply to the taxable portion of scholarships and fellowships. A 30-percent or lower treaty rate applies to fixed or determinable annual or periodic income payments from U.S. sources unless an Internal Revenue Code exemption applies (see IRS publication 515, "Withholding Tax on Nonresident Aliens and Foreign Corporations"). [26 U.S.C. 1441, 26 U.S.C. 871(a)]

13. Is a foreign national subject to social security taxes? Yes. Foreign nationals employed in the United States are subject to social security taxes with certain exceptions:

(a) F-l, J-l, and M-l nonresident aliens are exempt from social security taxes on authorized employment. [26 U.S.C. 3121(b)(19)] F-l, J-l and M-l resident aliens are not exempt. A foreign student who has been physically present in the United States for more than 5 years is a resident alien unless the student can prove he or she is not intending to reside here permanently. [26 U.S.C.7701(b)(5)(E)(ii)]

(b) Students enrolled in and employed by an academic institution are exempt from social security taxes. This exemption applies to foreign nationals (regardless of residency status) and U.S. citizens.

(c) A foreign national sent to work temporarily in the United States by his foreign employer may be exempt from U.S. social security taxes under a totalization treaty. However, the individual must be paying foreign social security taxes to receive such exemption. Booklets on specific treaties are available from the Social Security Administration.

14. Is a foreign national subject to state income taxes? A foreign national who has income from U.S. sources may have a state income-tax obligation as well. The rules determining income and tax vary by state.

15. What are the state income-tax rules applying to foreign nationals? The rules on residency and nonresidency for state income-tax purposes are the same as the rules for U.S. citizens. The rules vary by state.

16. Can a foreign national who cannot obtain a social security number file a tax return? Yes. Unlike Form 1040, Form 1040NR does not require a social security number. Just indicate "None" in the appropriate space on the form. During the legalization program, the IRS designated that the code "205(c)" be used in place of a social security number by foreign nationals required to file Form 1040 but who cannot obtain a social security number. So far, the IRS has not rejected this code when used by other foreign nationals who must file Form 1040 but who cannot obtain a social security number. The individual should use the same number or designation on the state income-tax return that he or she uses on the federal tax return.

17. How will the tax authorities know if a foreign national does not file required tax returns and pay U.S. tax obligations? IRS computers compare forms submitted by employers and other payors to report income (Forms W-2, 1099, 1042S) with individual tax returns. If an individual return is found to be missing, the IRS contacts the individual concerned. The IRS's computerized information is shared with state tax authorities, who may also contact the individual.

Also, the IRS now requires all applicants for permanent residence in the United States to submit Form 9003 to disclose tax-related information. The individual must answer questions about physical presence in the United States, income from U.S. sources, and U.S. tax returns submitted for the preceding three calendar years.

Citations are to statutes contained in volume 26 of the United States Code, which does not contain the many regulations, rulings, and procedures developed by administrative agencies and the courts in the course of implementing and interpreting the statutes. Readers wishing to review the latter materials should consult one of the tax-law series published by Commerce Clearinghouse or Matthew Bender.

Every attempt has been made to include all relevant information in a concise and accurate manner. However, NAFSA and the authors cannot be held responsible for the contents of this section. Please consult your tax adviser for assistance with your particular case.

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APPENDIX 13

Information for Students and Scholars from the People's Republic of China

Regarding President Bush's Executive Order of 11 April 1990

On 11 April 1990 President Bush issued an executive order directing the Immigration and Naturalization Service (INS) and the Department of State to provide certain protections for nationals of the People's Republic of China. The executive order incorporates many of the benefits granted on 30 November 1989 to PRC nationals. The order also includes several new provisions. The main points of the executive order are as follows:

1. The deferral of enforced departure (DED) has been extended until 1 January 1994 for PRC nationals and their dependents who were in the United States on or before 11 April 1990.

2. PRC nationals present in the United States on or before 11 April 1990 are provided with:

- an "irrevocable" waiver of the 2-year home-country residence requirement that must be exercised by 1 January 1994
- employment authorization through 1 January 1994
- maintenance of lawful status for the purpose of changing nonimmigrant status or adjusting to permanent residency. (Note: this benefit is only available to those PRC nationals who were in a lawful nonimmigrant status on or before 5 June 1989.)

3. The requirement that PRC nationals hold a valid passport while in the United States is waived until 1 January 1994. In addition, INS and the Department of State will process and provide necessary documents to allow travel abroad and reentry into the United States for PRC nationals.

Questions and Answers

1. I entered the United States after 5 June 1989. I have a friend who entered the United States after 1 December 1989. Do both of us benefit from the executive order? Yes. All PRC nationals who entered the United States by 11 April 1990 (the date of the order) benefit from the provisions of the executive order. Among other things, these benefits include the waiver of the home-country residence requirement and employment authorization.

2. How do I get a waiver? You may obtain your waiver of the home-country residence requirement by filing an application for a change of nonimmigrant status or an application for adjustment to permanent residence. Only a reasonable or "nonfrivolous" application will be accepted for this purpose. An application to change to F-1 status filed by someone who has not been admitted to a school for full-time study and who has not been issued an I-20 form would not qualify as reasonable and therefore would not result in a waiver. If a reasonable application is filed, the waiver is granted. In addition, an application for adjustment of status to permanent residence, if the applicant is qualified, constitutes a waiver.

3. When I get my waiver, do my spouse and children get a waiver too? If they are dependents on your visa and in J-2, F-2, H-4, or similar status, their waiver is granted with yours. However, they must be included as part of your application for a change of status or permanent residence. Dependents who are in F-1, J-1, H-1, or similar status must file separate applications.

4. What will I need to do to apply for a change of nonimmigrant status? You should continue to maintain your current status and file an application for a change of nonimmigrant classification on INS form I-539. You should include documents required for the status to which you wish to change (e.g., forms I-20, I-129B) and the $60 fee. On item 13 of Form I-539 you should note that you are a PRC national and eligible to apply for a change of status and to receive a waiver. You should also include documentation that shows you were in the United States on or before 11 April 1990. Remember that persons subject to the 2-year home-country residence requirement must file before 1 January 1994 in order to obtain a waiver of this requirement.

5. Is it any easier to change nonimmigrant status in the United States because of the executive order? No. All of the established regulations and procedures remain in place for change-of-status applications. However, as stated above, for persons subject to the 2-year home-country residence require-

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ment, and who qualify to apply, the home return requirement is waived if one files to change to another nonimmigrant status before 1 January 1994. PRC nationals who were not in lawful status prior to 5 June 1989 are disqualified from filing for a change of nonimmigrant status within the United States.

6. Is it any easier to get permanent residence because of the executive order? It is still necessary to be sponsored for permanent residence through a family member or an employer. The executive order does provide some special exceptions to the immigration laws, such as a waiver of the 2-year home-country residence requirement. The laws governing permanent residence are complicated and it may be advisable to consult with a qualified immigration attorney before filing an application.

7. How do I get permission to work? An application for evidence of work authorization is made on INS Form I-765 (Application for Employment Authorization). When completing the application, INS has advised that on page 3 of the form applicants should check box A-11 under the heading "Group A." It is not necessary to prove economic necessity and the normal fee of $60 is waived. Applications should be filed at the local INS office having jurisdiction over your place of residence. It is recommended that you contact your adviser to determine whether or not you can file an application in person or whether you must file by mail.

8. As an F-1 or J-1 student, does this mean I can work full time? No. Previous instructions from INS on this point remain in effect. To maintain F-1 or J-1 student status, students may only work part time when school is in session and full time during annual vacation periods.

9. Will my spouse who is in F-2 or H-4 status be able to work? Yes. As long as your spouse entered the United States on or before 11 April 1990, he or she may apply for evidence of work authorization. The application procedure described in question 7 applies. Full-time work is permitted up to the date noted by INS on the I-94 card.

10. I obtained work permission under the initial presidential directive of 30 November 1989 but it expires 5 June 1990. What do I do now? Originally, the employment authorization granted to the PRC nationals was limited to 5 June 1990. However, the 11 April executive order extends this permission until 1 January 1994. To renew your work permission, follow the procedures outlined in question 7.

11. If I change (or have already changed) to F-1 status, how soon can I get authorization for practical training employment? Under F-1 practical-training regulations one must have pursued a full course of study for 9 months before practical training may be authorized. INS will count the number of months immediately preceding the change to F-1 status during which you followed a full course of study. For example if you were in J-1 student status pursuing a full course of study before changing to F-1, the time you spent as a J-1 student counts toward the 9 months required for practical training. The same would apply if you were in any other nonimmigrant status and were pursuing a full course of study immediately prior to changing to F-1 status. It is important to note that if you held a student status in the past, but not immediately before changing to F-1, you will not be able to count that time toward the 9-month period.

12. What does it mean that the requirement for a valid passport is waived? Under the immigration regulations one must have a valid passport to be granted an extension of stay, change of nonimmigrant classification (for example J-1 to F-1), or other benefits. Chinese nationals may apply for and be granted these benefits by INS even though their passports have expired, have been lost, are being held by the Chinese embassy, or are otherwise unavailable. This passport waiver continues until 1 January 1994.

13. If I do not have a passport or if my passport has expired can I travel to other countries? See the responses to questions 14 through 17 below.

14. How will INS and the Department of State facilitate travel abroad and reentry into the United States for PRC nationals? PRC nationals who wish to travel outside the United States and return may file for "advance parole" at their local INS district office. To apply, you must send a letter to the INS district office director describing the reason for your trip abroad and your need for advance parole (see question 15 below). You must include three passport-size photographs with your letter. If your request is approved, INS will issue you Form I-512 to which your photograph will be attached. In addition, Form I-512 will have a special notation permitting you to reenter the United States in the same status you had upon departure. The form will also be marked with the following phrase: "The holder of this document will be re-admitted under the President's executive order 12711 of 11 April 1990." There is a $65 fee for the advance-parole application or approval. Procedures for advance parole may vary from the description above. You should consult with your campus adviser for additional details before filing an application for advance parole.

15. What does advance parole allow me to do? Advance parole preserves your right to leave the United States and return in the same status you had when you left. No visit to a U.S. embassy or consulate or visa stamp in the passport is required for your return to the United States. For example, if you were a J-1 student and changed to F-1 status, you may apply to INS for advance parole to leave the United States and return in F-1 status without a new or changed visa stamp in the passport.

16. Should I apply for advance parole now so that I have it available when I want to travel? No. Advance parole has a specific period of validity. The filing of an advance parole request requires that one have a definite itinerary for travel abroad, such as set departure and return dates, and a compelling need for travel. It is normally granted only for the specific period that you must be out of the United States.

17. Does advance parole allow me to travel to other countries and assure my admission to those countries? Not necessarily. Each country in the world decides which persons it will admit within its borders and under what conditions and for what lengths of time those persons are admitted.

Advanced parole confirms your right to be readmitted to the United States, but it does not and cannot affect the visa issuing rules of other countries.

18. If I travel to another country may I apply for and obtain a visa to reenter the United States? You may apply for a visa at a U.S. embassy if you have the proper supporting documents. However, nothing in the executive order requires the U.S. consular officer to issue a visa. This means that even though you apply, the consular officer may refuse to grant the visa. Thus, you may wish to obtain advance parole before leaving the United States so that you can be sure of being able to return.

19. I was out of status before 5 June 1989. How do I benefit from the new executive order? You may take advantage of deferred departure and work authorization, both of which are extended to 1 January 1994. The new executive order does not permit you to regain your nonimmigrant status while in the United States.

20. I was in status on 5 June 1989, but am out of status now. How do I benefit from the executive order? Under the executive order, you will be considered to have maintained your lawful status for certain specific purposes. These include applications for a change of nonimmigrant status or adjustment to permanent residence. Consequently, you may apply for a change of status or for permanent residence (if you are eligible under the existing laws and regulations) at any point before 1 January 1994.

21. If my current nonimmigrant status is expiring and I have no way to extend this nonimmigrant status or change to another one, what will happen? The INS has been directed to send you a notice advising you that deferred departure and work authorization are available to you until 1 January 1994. At or near the end of your authorized stay in the United States you may apply to the INS for these benefits.

22. What happens if my stay expires and I stay in the United States but do not contact INS? You will not have evidence of work authorization and no employer may hire you without breaking the law. If, before 1 January 1994, INS discovers that you are still in the United States, it will follow the notification procedures described in question 21 above.

23. I filed a application for asylum but now want to withdraw that application and return to nonimmigrant status. How can I do that? INS policy provides that an application for asylum does not violate or terminate an individual's lawful nonimmigrant status. Consequently, if you decide to withdraw your asylum application or if your application was denied by INS, you are still considered to be in your nonimmigrant status. This only applies, however, if you have not exceeded your authorized period of stay in the United States and have not otherwise violated your nonimmigrant status (e.g., by working illegally).

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